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Important Meetings

THE annual meeting of the American Law Institute, which begins in Washington, D. C., on April 29, would alone be sufficient to mark the month as particularly significant in the legal calendar for 1926. But when to this event is added the special meeting of the Conference of Bar Association Delegates, to be held on the day preceding the meeting of the former body, the month becomes doubly important. The general plan of work of the Institute is too well known to require repetition here. Further drafts of the Restatement, which have gone through the elaborate and careful process provided, will be submitted to the meeting for discussion and action. The Conference of Bar Association Delegates will take up the question of bar integration and the discussion promises to be instructive and interesting. The subject is one which is attracting the attention of Bar Associations to an increasing extent. The plans of the two bodies include a joint dinner on April 30, immediately preceding which there is to be a reception at the White House.

Another social event of interest in the Capital City will be a banquet of Pilgrims to the Shrine of the Common Law at the Mayflower Hotel on the evening of April 30. Invitations have been sent to several hundred members of the Association who went to London in 1924 and the dinner promises to be a notable affair. Henry E. Davis is Chairman of the Committee of Arrangements and F. Regis Noel, 410 Wilkins Building, Washington, D. C., is Secretary.

Bar Organization in Iraq

FROM Mr. Edward M. Groth, American Consul at Bagdad, Iraq, comes the interesting information that bar organization in that ancient and romantic capital reflects the most advanced modern occidental ideas. On Nov. 9, 1925, the Bar Association Regulations were signed by the Regent and promulgated by the Minister of Justice. These regulations give the organization complete control over the profession except as to certain matters reserved to the Bar Discipline Committee. No person can practice law before any court in Iraq unless he is a member of the Association and holds a license to practice granted by it. The Bar Discipline Committee is to consist of two judges of the court of cassation and three advocates; under the presidency of the President of the Court of Cassation. This body is empowered to decide the following matters: Objections to the decision of the Bar Association in connection with the grant or refusal of licenses; objections arising of out of matters concerning the admission of advocates to a higher grade; suspension of advocates from practice; cancellation of licenses and repulsion of advocates from the Association. The judicial members of this committee are to be named yearly by the Minister of Justice and the three advocate members are to be named for the same period by the general meeting of the Bar Association.

International Law Association Meetings

CABLE information has just been received from the headquarters of the International Law Association in London stating that the biennial meeting of the Association this summer will be held in Vienna instead of in Marseilles as had previously been planned. The sessions will take place between August 5th and 11th, 1926. Further details will be announced as soon as complete data is received from London.

The American Branch of the Association held its annual meeting and dinner at the Hotel St.

Regis, New York City, on February 22, 1926. It was attended by members from many states and was presided over by Hon. Robert E. Lee Saner, formerly President of the American Bar Association. Officers for the year 1926 were elected as follows:

Honorary President, Hon. William Howard Taft; President, Dr. Arthur K. Kuhn, New York; Honorary Vice-Presidents—Hon. John Bassett Moore, New York; Rt. Hon. Sir Robert Borden, Ottawa; Hon. John W. Davis, New York; Dr. Charles Noble Gregory, Washington. Vice-President, Edwin R. Keedy, Philadelphia; Treasurer, Ira H. Brainerd, New York; Hon. Secretary, Amos J. Peaslee, 501 Fifth Ave., New York City.

Executive Committee—Robert E. L. Saner, Chairman; Arthur K. Kuhn (ex-officio); Ira H. Brainerd (ex-officio); Amos J. Peaslee (ex-officio); Hollis R. Bailey, Boston; Justin Chancellor, Chicago; Oliver H. Dean, Kansas City; Edward A. Harriman, Washington; Manley O. Hudson, Cambridge; P. B. Mignault, Ottawa; William E. Mikell, Philadelphia; Harrington Putnam, New York; Phanor J. Eder, New York; Lucien H. Boggs, Jacksonville, Fla.; George B. Rose, Little Rock, Ark.

The Honorary Secretary reported an increase of 465 members during the past year bringing the total members to 659.

Committee on Scope and Plan

THE Committee on Scope and Plan met in Chicago, Thursday, April 8, 1926, for the purpose of preparing amendments to the By-Laws and Constitution of the Association defining the duties of the various Committees.

The Committee consists of Mr. A. C. Paul of Minneapolis, Judge Wm. M. Hargest of Harrisburg, Pennsylvania, and Frederick A. Brown of Chicago, Chairman.

The Committee agreed on all matters excepting as to the powers and duties of the Committee on Commerce, Trade and Commercial Law.

After hearing arguments from Mr. Province M. Pogue, the Chairman of the Committee on Commerce, Trade and Commercial Law, and Mr. Rush C. Butler, it was tentatively decided to divide the last mentioned Committee into two Committees, one to be known as the Committee on Commerce, having to do with Interstate and Foreign Commerce only, and another Committee to be known as the Committee on Commercial law and Bankruptcy.

There was considerable discussion on this last matter, some members of the American Bar Association having expressed themselves to the effect that it was desirable that there should be a Committee on Bankruptcy Law and Practice and another Committee on Commercial Law.

At the meeting of the Executive Committee of the American Bar Association held at Los Angeles in January, it expressed itself as in favor of having three Committees—Committee on Bankrupcy Law and Practice, Committee on Interstate and Foreign Commerce and Committee on Commercial Law.

There is to be a further meeting of the Committee to decide this latter question and in the meantime the Committee on Scope and Plan would be very glad to hear an expression of opinion from the members of the American Bar Association.

To Reform Criminal Procedure

GOV. FRIEND W. RICHARDSON of California has recently appointed the members of a commission for the reform of criminal procedure, in accordance with an act of the last legislature. In announcing the personnel of the new body, the Governor said:

"I have appointed a committee to make a study of methods of criminal procedure and report to the next Legislature a new system of trying criminals, or amendments to the present criminal laws. This has been done in order that there may be a more swift and certain administration of justice in criminal cases. The present criminal system has become a farce and through the machinations of clever criminal lawyers numerous cunning crooks and bloody criminals have been turned loose to prey upon society. This condition must be remedied if the people are to be protected.

"I expect the three able and experienced men I have appointed will be able to suggest valuable changes in criminal procedure for the good of society. Walter K. Tuller has made an extensive study of the weak points of criminal procedure and has been collecting data for some time. He was at the head of the Los Angeles crime commission and is well equipped for the work. John U. Calkins, Jr., has had practical experience as deputy district attorney of Alameda county and knows the weak points of the criminal procedure. Thomas M. Gannon has had valuable training in criminal matters, both as state legislative counsel and as a member of the prison board."

JUDICIAL POWERS THAT SHOULD BE EXERCISED

Situation from the Viewpoint of a Trial Judge—Courts Do Not Exert the Power They Now Possess to Prevent Unnecessary Delays Before, During and After the Trial—Judge's Important Part in England, Canada and Our Federal System—How Reviewing Courts Can Help*

By Hon. Chauncey L. Newcomer
President Ohio Association of Common Pleas Judges, 1925

LAST year, I discussed the power of the trial judge to bring a case to trial. (23 Ohio Law Bulletin, 253.) At that time I gave you some figures showing the cases disposed of and the condition of the dockets. This year I wish to discuss not only the power of the judge to bring the case to trial but also the judicial power during the progress of the case.

The judicial statistics prepared by the clerks and submitted to the secretary of state for the year ending June 30, 1925, show that 4,544 more cases were filed than were filed in the court of common pleas during the preceding year. The courts disposed of 73,224 cases; during the preceding year they disposed of 71,268. The average number of cases disposed of per judge during last year was 572; during the preceding year, 556. On June 30 last, the number of pending cases in eleven counties in this state was more than the number of cases filed in that county in one year. In 25 counties the pending cases are more than the cases filed in nine months. The judge has the power to assign cases for trial as soon as they are at issue. There are enough common pleas judges in Ohio to try the cases. In 64 counties the total number of cases disposed of is less than 572, less than the average number of cases disposed of per judge. In 19 of the 25 counties in which the pending cases are more than the cases filed in nine months, the judges are disposing of less than the average number of cases per judge.

In the United States Courts, according to an article in the New York Times, there was then pending in Federal courts 162,000 cases—125,000 cases are filed in those courts in a year. In the Federal courts the pending cases are equal to the cases filed in those courts in 15½ months. In Ohio in the courts of common pleas the number of cases filed in a year is 75,065 and the number of cases pending is 50,462, the pending cases being equal to the number of cases filed in eight months. In other words, the average Federal docket is 15½ months behind; the average common pleas court docket in Ohio is eight months behind. By reason of the time for pleadings, and by reason of the time necessary in foreclosures and receiverships, the average docket should be about four months behind. In Cuyahoga county the number of pending cases equal the cases filed in 5.8 months. In the actual trial of the cases in Cleveland the equity cases, divorce cases and non-contested cases are reached in less than 5.8 months. The jury trials are reached in about 9 months.

The Chief Justice has the right to assign judges to places where the work is to be done. It is up to the judges, with the assistance of the members of the bar, to see that the work is done within a reasonable time. In criminal cases and in personal injury cases delay is often sought by the attorneys for the defense. In doubtful cases brought to obtain money by way of settlement delay is usually sought by the plaintiff. If the case is brought to trial promptly, witnesses will tell more nearly what occurred, and will not testify so much from what they believe occurred by reason of hearing the matters rehearsed. The time to complete the pleadings is ample. The court has the power to place the case on the trial list over the objection of all counsel. The judge can prevent delay; the clients do not want delay, the lawyers frequently seek delay.

If a person goes to a tailor for a suit, he expects results within a week. If he goes to a lawyer for a suit, the average time in Ohio in which he gets results is eight months. Of course there is a difference in the fit and the fitter, a difference in the trying on, and the trier. But there is no valid reason for so great a difference in the time of getting results. In any other line of business activity a delay of eight months in getting what should be delivered in three or four months would not be tolerated. The courts that are now dispatching business with the speed that was in vogue in the leisurely days of sailing vessels and ox carts, are not keeping pace with the present day civilization. An age which is accustomed to the speed of the radio will be impatient with court procedure based upon the needs of an age that has passed. Relief can be obtained without legislative action. "The judicial power of the state is vested in . . . courts."

The courts not only permit delays before trial in failing to force the case to trial, but too often permit delays after the case has been submitted. During the past year a demurrer was resubmitted to me which had been submitted to another judge two years before. That judge had held the demurrer for 22 months until his death. A case in equity which required several days to take the evidence was resubmitted to me on the transcript of the evidence seven months after it had been submitted to another judge who had held it for five months until his death. I am not yet ready to die. I decided the demurrer as soon as it was submitted and decided the equity case immediately after reading the transcript of the evidence.

I commend the Supreme Court for shortening the time before hearing in that court, and for promptly deciding a case after it has been submitted. The Court of Appeals in some of the circuits ought more promptly to decide submitted cases. But much more ought to be done by the Court of Appeals in shortening the time between the decision in the court of common pleas and the submission of the case in the Court of Appeals. In criminal cases and in some civil cases it is usual to get a stay of execution of sentence or judgment by applying to the Court of Appeals for such

*Presidential address delivered at annual meeting of the Association of Common Pleas Judges, Cincinnati, 1926.

stay. In a recent case heard by me which should speedily be terminated, I suspended execution of the judgment for fifteen days to enable the parties to get into the Court of Appeals. The stenographer had the bill of exceptions ready before the expiration of fifteen days. The case should have been heard promptly in the reviewing courts. A stay of execution was obtained in the Court of Appeals. The bill of exceptions, although ready a month before, was filed on the fortieth day after overruling the motion for a new trial. The case has not yet been heard in the Court of Appeals.

The Court of Appeals has the power to suspend execution of sentence on condition that the bill of exceptions be filed by a certain date and the sentence be no longer suspended if the bill of exceptions be not then filed. Other illustrations can be given in which the court has power to prevent delays. The courts do not use the power which they now have to prevent unnecessary delay before, during and after the trial.

By reason of the failure of the courts to keep abreast with the activities of this age, to meet the new situations promptly, economically and efficiently as they arise, a demand for the creation of boards and commissions to handle many questions which more properly should be presented in a court, has arisen. Some courts have so far forgotten that the judicial power is vested in the courts that they have sat with a jury and submitted a controversy, a case, to the jury upon the transcript of what occurred before the industrial commission, and that alone. The court either hears a case with all the judicial power that is inherently in a court or it does not hear it at all. The court should try the case as a court or refuse to hear the appeal. The legislature can neither add to nor detract from the judicial power that is vested in the courts. The courts themselves by failing to keep abreast with the demand of the times have caused the creation of some of these boards.

The legislature has attempted to prevent delay after a case has been submitted by providing in section 1685 G. C., that a case shall be decided within thirty days after it has been submitted. Other acts have attempted to compel the hearing of a case within thirty days after it is filed. The enactment of these laws is a criticism of the delay in the courts. But the legislature has no more right to tell a court when it shall hear or decide a case than the court has the right to tell the legislature when to vote on a law.

The courts fail to use the power which they now have. The history of the development of the law, the entire background of the law in England, in Canada, in the Federal Courts of the United States and in the courts of Ohio is much the same. Yet there is a marked difference in the exercise of the judicial power in these jurisdictions. In England and in Canada the courts exercise this judicial power. In the Federal Courts of the United States the courts have used much more of the judicial power than has been exercised by the courts in the state of Ohio.

The Constitution of the United States and the Constitution of the State of Ohio both state that the judicial power is vested in the courts, not granted to the courts. Some powers are granted by the constitutions. The judicial power was in the courts at the time the constitutions were adopted. The constitutions recognize that fact by saying this power is vested in the courts. The legislature does not have the power to take it away. Is there any reason why the courts should not use it? Should the judge be a mere umpire between skilled lawyers or should he guide the trial of the case? Should he remain silent when lawyers depart from the issues, or should he bring them back to the case without waiting for the other side to object? Should he remain silent when a lawyer does not bring out what a witness knows, or should he by proper questions bring the facts to the attention of the jury? Should he assist the jury in sifting out the material evidence, or should he give a colorless charge, which contains nothing but general propositions of law? In England the judge tries the case, the lawyers assist. In Ohio the lawyers try the case, the judge sometimes does no more than preserve order, and sometimes not even that. If the judge does more than preserve order alleged misconduct of the judge is strenuously urged in the reviewing courts as a ground for reversal.

We know that able experienced lawyers, whose fee for the trial of the case may be more than a year's salary of the judge, resent any interference by the judge in the conduct of the case, yet it is the duty of the trial judge to conduct a case so that the rights of each party may be fully developed and protected. The judge, not the lawyer, should control the conduct of the case. When reviewing courts fully realize this right of the trial judge, when reviewing courts cease reversing because of a "wink or a nod" or some other alleged misconduct of a trial judge who has assisted the jury to grasp the turning point of the case, then many of the trial judges will not be so timid about showing that they are able judges in jury cases as well as in equity cases.

In the trial of equity cases the facts are determined by the court without the assistance of a jury. In the trial of many civil cases a jury is waived and the facts are submitted to the court. Facts are facts whether investigated on the law or the equity side of the court. In equity cases the court must determine the facts. In jury cases in most of the states the opinion expressed by the court on any phase of the facts is regarded as reversible error. Is a judge sitting as a chancellor in an equity case endowed with greater wisdom, with greater ability to sift the evidence and to determine the facts, with greater fairness to arrive at justice than the same judge when sitting in a case tried to a jury?

In England, in Canada, and in the Federal courts the judge continues in jury cases to be an important part in the conduct of the trial, and in the determination of the issues. The court may analyze the evidence, may express an opinion on the evidence but must finally submit the matter to the jury for its determination. In twenty-one of the states of the United States the trial judge is prohibited by the state constitution from expressing any opinion to the jury on the facts. In one or two of the states the constitution goes so far as to provide that the jury is the judge of both the law and the facts. The pioneer spirit which enjoyed the excitement of the trial of a law suit, which was thrilled by the mere sport of the game, has so influenced the electorate that in twenty-one states the power of the judge to assist the jury in arriving at the facts on the trial of a case has been shorn by the constitution enacted by the people. In eighteen states by court decisions the courts themselves have attempted to deny to themselves the power, the right, to comment on the evidence or to express an opinion on the evidence to the jury. In nine of the states the courts have recognized the right of the trial court to comment

on the evidence, the same as in the Federal courts. These figures may not now be accurate because of constant changes in constitutions and in court precedents. In seventeen of the states the courts have by the constitution the same power to comment on the evidence, to control the trial of the case as the Federal courts. They are not using this power, which the legislature cannot take away, because some reviewing court said they should not. I challenge the right of a reviewing court to deprive a trial court of a power vested in the trial court by the constitution.

This popular opinion, bent on the sport of the game, arising from the spirit of the American frontier, that a court room is a forensic arena where lawyers, not the parties, are the winners, where the judge merely umpires between contesting counsel, not assisting in determining the rights of contending parties, has even found its way into the halls of congress. The bill in congress to curb the power of the judge was introduced for the reason that the Federal judge uses the judicial power vested in him during the trial and in his charge to the jury.

When the Supreme Court of Ohio stated in substance that the trial judge should not by nod or wink indicate to the jury the opinion of the judge on the evidence, or the credibility of a witness, it attempted to deprive the trial judge of the right to assist the jury, which right has existed throughout the history of the common law and now exists. The Constitution of Ohio does not deprive the judge of this power. A part of the judicial power which has come down with the common law, being a part of the common law at the time of the adoption of the constitution, is the right of the trial judge to assist the jury in arriving at the facts, but finally to submit the issues to the jury for its determination. Ohio is one of the states that by action of the courts does not use this power. The revising courts have denied the trial courts the right to use this power. These precedents are not based upon the common law. They are precedents growing out of a pioneer situation, out of a time when the judges frequently were not lawyers. They are precedents suited to the court of a justice of the peace. We hope in Ohio we are at least by that stage in our civilization. Yet too often in the court room it is the sport of the game played by brilliant lawyers rather than the justice of the case that attracts public attention. It is the lawyers that win, not the parties. Reviewing courts in Ohio have said that it is reversible error for the judge to comment to the jury on the evidence, to express his opinion on the evidence, yet those are court-made precedents which can be overruled by the same power that made them. If such precedents were ever justified by the conduct of trial judges in Ohio we hope they are not now justified.

I know full well that able lawyers skilled in a particular branch of the law who rely upon their technical knowledge and upon their ability to sway juries, resent any interference by the trial judge in the trial of the case. Notwithstanding this attitude of the bar it still remains the duty of the bench to try the case so that justice may be the result.

It is a sad commentary upon the bar of the several states in the American Union that most reforms must be forced upon them from without. Precedents, many of them dealing with situations of an age that is past, not applicable to the changed conditions of the present, are too literally read. The bar having learned these precedents and used them to the disadvantage of the less learned, oppose any change which might deprive them of this advantage which they have acquired by reason of their long years of practice and their accurate knowledge of the precedents of the past. Reforms that are forced upon us from without may be ill-considered, and may tend to break down the system. It is better that reforms be forced from within.

The time limits within which acts are to be done should be shortened, an arbitrary time limit should be fixed only to acquire jurisdiction, after that the judge should have discretion. At present, if a motion for a new trial is filed on the fourth day, or bill of exceptions on the forty-first day, it is too late. Some of the time limits are too long. The practice should be made more elastic. The time within which to file the paper giving any court jurisdiction should be fixed; the times for filing all other papers should not be absolute; the judge should have discretion in the matter of the filing of papers in every step of the procedure after the original paper giving jurisdiction is filed. The appellate judge should likewise have discretion in all matters, except that the original paper giving jurisdiction should be filed within a certain time, and that time should be shorter than at present.

In the conduct of the trial of an equity case the evidence is produced with more freedom, the judge feels more at liberty to ask any question, reviewing courts do not criticize the conduct of the trial judge in an equity hearing. In the trial of a case to a jury the judge has the same power to interrogate witnesses, to bring out the facts; and under the constitution has the power to assist the jury in analyzing the evidence, and has the right to express an opinion upon the evidence, leaving to the jury the ultimate decision. If a jury is present, the law of evidence is more strictly drawn. If the court in ruling upon the admissions or rejections of evidence states anything to the jury to assist the jury, counsel promptly take exceptions and urge them in the upper courts as ground for reversals. If anything is given in a charge except some plain statements of general principles which the jury is supposed to apply to the case, that is, if the judge attempts to assist the jury in picking out the turning point in the case, and directs the jury's attention to the evidence relating thereto, this is urged in the upper courts as ground for reversal.

Trial judges in cases with a jury often do not assist in getting all the evidence. The reason for this is that if a jury is present the trial judge, to avoid possibilities of reversal, says nothing at the trial; the charge is one that does not contain error for the reason that it contains nothing except some general principles. When I went on the bench several trial judges stated to me that the safe thing to do in the trial of a jury case is to make no comments during the progress of the trial, and to give a short charge on general principles. Judges in Ohio and in other states in discussing the work on the bench with me have stated that in order to avoid reversals they say little or nothing during the trials. This expresses the attitude of the trial judges toward the courts of review. The legislature long ago enacted a law, Sec. 11364 G. C., which provides that if substantial justice has been done in the case a reviewing court should not reverse the case unless the errors were clearly prejudicial. The fact that the legislature deemed it necessary to enact such a statute is a criticism of the conduct of reviewing courts. Most of you are ambitious to be on a higher bench—you will probably forget the troubles of a trial judge when you get there. Notwithstanding this statute has been on the books for many years, at the pres-

ent day reviewing courts, apparently, sometimes do not know, or if they do know, do not understand this statute. Cases in the reviewing courts are reversed upon errors which are not prejudicial. Some of the higher courts in a leisurely review of the questions which the trial judge had to decide instantly find errors which occurred during the rush of the trial, which did not influence the jury, and reverse the case. Other courts of review in Ohio approach cases from a different point of view. They assume that the judgment of the lower court is right. If substantial justice has been done the case is affirmed upon that ground irrespective of errors appearing in the record.

In criminal cases too often, in this twentieth century, rules and precedents are applied which were created during a civilization of the eighteenth century which demanded them because of harsh laws. The laws with the severe penalties have been changed, the procedure remains. The precedents of that day designed to prevent the execution of persons for petty crimes are now retained to free persons who if convicted could receive but light sentences. In the year 1925 in the state of Ohio, reviewing courts were reversing criminal cases for the reason that the reviewing court was not satisfied by sufficient evidence to prove the defendant guilty beyond a reasonable doubt of the crime charged. It is within the power of appellate judges to make changes in the precedents that will affect the whole spirit and purpose of our system of criminal justice.

Reviewing courts ought to remember that the presumption is in favor of the judgment of the lower court; if reviewing courts would follow what the legislature has expressed by enacting section 11364 G. C., if reviewing courts would reverse only when satisfied that substantial justice has not been done, then trial judges would give more attention in their charges and during the trial to assisting the jury. Interrogatories submitted by the court would be more freely used. Trial judges have stated to me that they charge the jury not for the purpose of instructing the jury but for the purpose of avoiding error in the upper court. This is a reflection of the attitude of the lower courts toward the reviewing courts which the reviewing courts should by their decisions remove.

Section 11364 G. C., in saying in substance that reviewing courts shall not reverse if substantial justice has been done, does not declare any new law. In fact there is grave question as to whether or not the legislature has any right to attempt to invade the judicial power by such an act. The judicial power being vested in the courts by the constitution of the state of Ohio, neither the people by a majority of the electorate nor the legislature can take that power away from the courts except by amending the constitution. If the courts do not use this power, or if the courts abuse it, then they are to be criticized for their omissions or acts of commission.

The appellate judges do not make the law of the case. The trial judge does that, the appellate judges merely state that he is right or wrong, by affirming or reversing the lower court. It is for the trial courts to take the steps in advance, hoping that the reviewing courts will keep apace in the procession. The trial judge should not only be familiar with the forces that control the present day civilization, with the trend of modern thought, with the hopes and ambitions of this age, but he should also have a knowledge of the precedents which have grown out of the wisdom of the ages that have passed, he should not only know the needs of today but he should know the precedents of yesterday. The lack of either of these seriously incapacitates a judge. If we must have a judge who lacks one or the other of these qualifications, the one who is well grounded in the precedents of yesterday is a safer judge than the one who knows only the trend of public opinion of the present.

May we look forward to a judiciary in Ohio selected without reference to bloc, party or power, assured of tenure in office, unhampered by any necessity to appeal to the public through the press or by public addresses in order to assure re-election; receiving at least sufficient compensation to enable them to pay the ordinary living expenses for themselves and their families, so that they may not be compelled to rely upon other income for a fair living; receiving a reward commensurate with the services rendered; having as a preliminary qualification, six or eight years of actual court practice; knowing the law of yesterday but guided only by those precedents that are applicable to the civilization of today—fearless, learned, courageous, just?

Calendar of Coming Events

American Bar Association Meets at Denver, Colorado ..... July 14-15-16

Conference of Bar Association Delegates Holds Special Meeting at Washington, D. C..... April 28

American Law Institute Holds Fourth Annual Meeting at Washington, D. C..... April 29-30 and May 1

Texas, Arkansas and Louisiana Bar Associations Hold Joint Meeting at Texarkana... April 22-23-24

Mississippi State Bar Association Holds Annual Meeting at Biloxi..... April 27

Georgia State Bar Association Holds Annual Meeting at Tybee Island..... June 3-4-5

Iowa State Bar Association holds Thirty-second Annual Convention at Davenport..... June 17-18

Illinois State Bar Association Holds 50th Annual Meeting at Rock Island-Moline..... June 24-25-26

Wisconsin State Bar Association Holds Annual Meeting at Kenosha ..... June 24-25-26

North Carolina State Bar Association Holds Annual Meeting at Wrightsville.... June 30, July 1-2

The Conference of Commissioners on Uniform State Laws Meets at Denver..... July 6-10

Indiana State Bar Association Holds 30th Annual Meeting at Michigan City, Ind..... July 8-9

Montana State Bar Association Holds Annual Meeting at Great Falls Week of..... July 5

Minnesota State Bar Association Holds Annual Meeting at Duluth..... July 13-14-15

Commercial Law League Holds 1926 Convention in San Francisco in Week Beginning..... July 19

California State Bar Association Holds Annual Meeting in Yosemite Valley September9-10-11

Missouri Bar Association Holds Annual Meeting at Kansas City..... October 1-2

REVIEW OF RECENT SUPREME COURT DECISIONS

State Police Power and Interstate Commerce—Injunction of Railroad Extensions Made Without Commission's Consent—Order to Remove Unjust Discrimination—Duty of Railroad to Prove Value of Use or Damage Suffered During Federal Control in Order to Recover Compensation—North Carolina State Inheritance Tax on Stock of Non-Resident—Gifts in Contemplation of Death—State Taxes on Rolling Stock —Special Assessments

By Edgar Bronson Tolman

Interstate Commerce,—Exercise of the State Police Power

The Washington Quarantine Act is unenforceable and has become an illegal interference with interstate commerce because Congress by the passage of the act authorizing the Secretary of Agriculture to declare and enforce quarantine against plant diseases "has acted and occupied the field." In these circumstances the failure of the Secretary to act supports the presumption that action was not necessary.

Oregon-Washington Railroad & Navigation Co. v. State of Washington, Adv. Ops. 332, Sup. Ct. Rep. v. 46, p. 279.

The unusual interest of this case is twofold; it lies on the one hand in a further delimitation of that field where the State's police power may be caused to yield to the exercise of Congressional power, and on the other hand in the serious practical problem which the decision evokes in depriving the States of the power to prevent the introduction from other States of threatening plant diseases or parasites.

By a law enacted in 1921 the State of Washington authorized its Director of Agriculture to establish and maintain quarantine necessary to keep out of the State plant diseases and insect pests injurious to agriculture. The Director was authorized to make inspections, and to prevent the movement into the State of infected articles, and the Act provided for punishment by fine or imprisonment. During the summer of 1921 the Director determined that the alfalfa weevil, a dangerous insect pest, was prevalent in territories adjacent to the State of Washington. Acting under this statute, he forbade the introduction into the State of alfalfa hay and alfalfa meal. The bill alleged that the railroad, knowing of this quarantine, nevertheless had carried and was threatening to continue to carry into the State carloads of alfalfa. A temporary injunction was issued and the railroad filed an answer. On behalf of the State it was shown that the railroad was carrying infected alfalfa through parts of Washington where alfalfa was raised, and that the only known method of checking the pest was through quarantine. The railroad introduced evidence to show that the dangers from the weevil were exaggerated, and that infection from hay shipped in cars was very improbable. The local court made the injunction permanent, and the Supreme Court of Washington affirmed the decree. Under Section 237 of the Judicial Code the case was brought to the Supreme Court of the United States, and there the decree was reversed, two Justices dissenting.

The Chief Justice delivered the opinion of the Court. He reviewed the facts and then stated the general principles of law here applicable:

> In the absence of any action taken by Congress on the subject matter, it is well settled that a state in the exercise of its police power may establish quarantines against human beings or animals or plants, the coming in of which may expose the inhabitants or the stock or the trees, plants or growing crops to disease, injury or destruction thereby, and this in spite of the fact that they necessarily affect interstate commerce.

He quoted from Gibbons v. Ogden, and a recent case, wherein the power of the States to enact quarantine legislation as a part of their police power, where not in conflict with Federal action, was clearly set forth. He then considered the first contention of the company: that the law went too far in that it forbade importations from certain States without qualifications and without any limit of time. Distinguishing a case cited in support of this contention, he said:

> We think that here the investigation required by the Washington law and the investigation actually made into the existence of this pest and its geographical location makes the law a real quarantine law, and not a mere inhibition against importation of alfalfa from a large part of the country without regard to the conditions which might make its importation dangerous.

But the principal, and the successful, contention of the railroad was that by certain enactments included in the Agricultural Appropriation Act of March 4, 1917, Congress had asserted its power with respect to the interstate commerce aspects of plant diseases, and had hence invalidated state legislation in this field. Section 8 of this Act authorizes the Secretary of Agriculture "to quarantine any State, Territory, or District of the United States, or any portion thereof, when he shall determine that such quarantine is necessary to prevent the spread of a dangerous plant disease or insect infestation, new or not theretofore widely prevalent or distributed within and throughout the United States. . ." The Act forbade the shipment, upon notice of such quarantine, of any "plant products" capable of carrying the disease or pest giving rise to the quarantine. After quoting these sections, the learned Chief Justice said:

> It is impossible to read this statute and consider its scope without attributing to Congress the intention to take over to the Agricultural Department of the Federal Government the care of the horticulture and agriculture of the states, so far as these may be affected injuriously by the transportation in foreign and interstate commerce of anything which by reason of its character can convey

disease to and injure trees, plants or crops. All the sections look to a complete provision for quarantine against importation into the country and quarantine as between the states under the direction and supervision of the Secretary of Agriculture.

It remained to consider certain cases upon which the State relied. A case holding that an early Colorado statute making it unlawful to import certain classes of diseased horses was not inconsistent with the Federal Animal Industry Act, was distinguished in the following paragraphs:

It is evident that the Federal statute under consideration in the *Reid* case was an effort to induce the states to cooperate with the general Government in measures to suppress the spread of disease without at all interfering with the action of the state in quarantining or taking any other measures to extirpate it or prevent its spread. Indeed the Commissioner of Agriculture in that case was to aid the state authorities in their quarantine and other measures from federal appropriation. The act we are considering is very different. It makes no reference whatever to cooperation with state authorities. It proposes the independent exercise of Federal authority with reference to quarantine in interstate commerce. It covers the whole field so far as the spread of the plant disease by interstate transportation can be affected and restrained. With such authority vested in the Secretary of Agriculture, and with such duty imposed upon him, the state laws of quarantine that affect interstate commerce and thus Federal law can not stand together. The relief sought to protect the different states, in so far as it depends on the regulation of interstate commerce, must be obtained through application to the Secretary of Agriculture.

In the relation of the states to the regulation of interstate commerce by Congress there are two fields. There is one in which the state can not interfere at all, even in the silence of Congress. In the other, and this is the one in which the legitimate exercise of the state's police power brings it into contact with interstate commerce so as to affect that commerce, the state may exercise its police power until Congress has by affirmative legislation occupied the field by regulating interstate commerce and so necessarily has excluded state action.

With reference to a later case involving state regulation of switching service of interstate cars, he said:

The number of cases decided since that case and above cited have made it clear that the rule, as it always had been, was not intended in that case to be departed from. That rule is that there is a field in which the local interests of states touch so closely upon interstate commerce that in the silence of Congress on the subject, the states may exercise their police powers and local switchings as in that case, and quarantine as in the case before us, are in that field. But when Congress has acted and occupied the field, as it has here, the power of the states to act is prevented or suspended.

Finally, the application of this conclusion to the present state of facts was made in these words:

It follows that pending the existing legislation of Congress as to quarantine of diseased trees and plants in interstate commerce, the statute of Washington on the subject can not be given application. It is suggested that the states may act in the absence of any action by the Secretary of Agriculture; that it is left to him to allow the states to quarantine, and that if he does not act there is no invalidity in the state action. Such construction as that can not be given to the federal statute. The obligation to act without respect to the states is put directly upon the Secretary of Agriculture whenever quarantine in his judgment, is necessary. When he does not act, it must be presumed that it is not necessary. With the federal law in force, state action is illegal and unwarranted.

If the gravity of the consequences of this decision causes it to be questioned, it will be challenged, if at all, only on the pronouncement in the closing paragraph, just quoted, regarding the presumption to be drawn from non-action by the Secretary of Agriculture. On this point, Mr. Justice McReynolds and Mr. Justice Sutherland, dissenting, said:

We cannot think Congress intended that the Act of March 4, 1917, without more should deprive the States of power to protect themselves against threatened disaster like the one disclosed by this record.

If the Secretary of Agriculture had taken some affirmative action the problem would be a very different one. Congress could have exerted all the power which this statute delegated to him by positive and direct enactment. If it had said nothing whatever certainly the State could have resorted to the quarantine; and this same right, we think, should be recognized when its agent has done nothing.

It is a serious thing to paralyze the efforts of a State to protect her people against impending calamity and leave them to the slow charity of a far-off and perhaps supine federal bureau. No such purpose should be attributed to Congress unless indicated beyond reasonable doubt.

Case argued by Mr. Arthur C. Spencer for plaintiff in error and by Mr. R. G. Sharpe for defendant in error.

Carriers,—Extensions, Industrial Tracks

Equity will enjoin the construction of extensions made without consent of the Interstate Commerce Commission, and will determine for itself whether the proposed construction is an extension requiring a certificate of convenience and necessity, or an industrial track, which requires no such certificate.

The Texas & Pacific Railway Co. v. Gulf, Colorado & Santa Fe Railway Co., Adv. Ops. 293, Sup. Ct. Rep. v. 46, p. 263.

Paragraph 18 of Section 402 of the Transportation Act of 1920 prohibits carriers from extending their lines without first obtaining a certificate of convenience and necessity from the Interstate Commerce Commission. Paragraph 22 excepts industrial spurs or sidetracks from the operation of this requirement. Paragraph 20 conveys jurisdiction upon courts of equity to enjoin constructions about to be made contrary to the provisions of Paragraph 18.

Suit was brought by the Texas & Pacific Company to enjoin the construction by the Santa Fe Company of projected trackage from its main line to the Industrial District west of Dallas, Texas. No certificate had been obtained from the Commission, and plaintiff's contention was that the proposed trackage was an extension and not an industrial sidetrack. The District Court so concluded and granted an injunction until a certificate should be obtained. The Circuit Court of Appeals for the Fifth Circuit reversed this decree. Upon further appeal to the Supreme Court the decree was again reversed.

Mr. Justice Brandeis delivered the opinion of the Court. Three contentions were successively considered, of which the first involves the important point of law. Here the Santa Fe argued that the issue whether the proposed trackage was an extension was an administrative question, and that until the Commission had decided that question the aid of the courts could not be invoked. But a consideration of the relevant provisions of the Act caused the learned Justice to conclude adversely to this contention. He said:

A carrier desiring to construct new tracks does not by making application to the Commission, necessarily admit that they constitute an extension. It may secure a determination of the question, without waiving any right, by asserting in the application that in its opinion a certificate is not required because the construction involves

only an industrial track. But a party in interest who is opposed to the construction is not authorized by the Act to initiate before the Commission any proceeding concerning the project. If application for a certificate has been made, he may appear there in opposition. If no such application has been made, paragraph 20 affords him the only remedy. That remedy is both affirmative and complete.

The function of the court upon an application for an injunction under paragraph 20 is a very different one from that exercised by the Commission when, having taken jurisdiction under paragraphs 19 and 20, it grants or refuses a certificate. The function confided in the Commission is comparable to that involved in a determination of the propriety or application of a rate, rules or practice. It is the exercise of administrative judgment. Where the matter is of that character, no justifiable question arises ordinarily until the Commission has acted. (Citing case.) The function of the Court upon the application for an injunction is to construe a statutory provision and apply the provision as construed to the facts. The prohibition of paragraph 18 is absolute. If the proposed track is an extension and no certificate has been obtained, the party in interest opposing construction is entitled as of right to an injunction. The issue presented to the court by a denial that the proposed trackage is an extension does not differ in its nature from that raised when the denial is directed to the allegation that the defendant is an interstate carrier. (Citing case.) If the facts are agreed, the question is one of law. If they are not agreed, the court must find them. In the case at bar, the District court, having jurisdiction generally of the parties and of the subject matter, was called upon to determine whether an allegation in the bill, essential to the cause of action, was established. This, the court clearly had power to do. Moreover, even if the question presented were, as contended, properly one of jurisdiction, the objection urged could not prevail. Every court of general jurisdiction has power to determine whether the conditions essential to its exercise exist.

A large part of the Court's opinion is devoted to a rehearsal of the facts bearing upon the next question: whether or not the proposed trackage was in fact an extension. The learned Justice held that these tracks were more than a mere industrial siding, and educed the following general conclusion:

The question whether the construction should be allowed or compelled depends largely upon local conditions which the state regulating body is peculiarly fitted to appreciate. Moreover, the expenditure involved is ordinarily small. But where the proposed trackage extends into territory not theretofore served by the carrier, and particularly where it extends into territory already served by another carrier, its purpose and effect are, under the new policy of Congress, of national concern. For invasion through new construction of territory adequately served by another carrier, like the establishment of excessively low rates in order to secure traffic enjoyed by another, may be inimical to the national interest. If the purpose and effect of the new trackage is to extend substantially the line of a carrier into new territory, the proposed trackage constitutes an extension of the railroad within the meaning of paragraph 18, although the line be short and although the character of the service contemplated be that commonly rendered to industries by means of spurs or industrial tracks. Being an extension, it cannot be built unless the federal commission issues its certificate that public necessity and convenience require its construction. The Hale-Cement Line is clearly an extension with this rule.

The third point, also decided adversely to the Santa Fe, involved the question of laches. The learned Justice held that the facts did not warrant a finding of laches; the Santa Fe had given no publicity to its plans, and the Texas & Pacific had lodged protests as soon as it had learned of the contemplated extension.

Mr. Justice McReynolds dissented on the ground that the question should have been first submitted to the Interstate Commerce Commission.

Argued by Messrs. T. D. Gresham and Thomas J. Freeman for appellant and by Mr. J. W. Terry for appellee.

Carriers,—Unjust Discrimination

An order to remove unjust discrimination does not require the carrier to extend service to the prejudiced railroad; unjust discrimination may exist although the carrier does not have direct physical connection with the prejudiced line.

The courts will not substitute their judgment as to the essential similarity of services forming the basis of a complaint of unjust discrimination, for that of the Commission.

Chicago, Indianapolis & Louisville Railway Co. v. United States et al., Adv. Ops. 285, Sup. Ct. Rep. v. 46, p. 226.

Four steam railroads entering Michigan City, Indiana, maintained reciprocal switching service at this point. The South Shore Line, a short electric railroad running from a point in Chicago to Michigan City, did not share in these privileges. It therefore brought a proceeding before the Interstate Commerce Commission to require one of these four, the Erie, to cease this discrimination against it. Pursuant to an order to cease discrimination, the Erie elected to enter into such a switching agreement with the South Shore. The Erie was the only one of the four having direct physical connection with the South Shore at Michigan City. Therefore, when, in a subsequent proceeding, the other three steam lines were required to remove this discrimination against the electric railroad, they brought suit in the federal court for Indiana to set aside the order upon the principal contention that their situation was in this respect different from that of the Erie. But the District Court denied the injunction and the decree was, on appeal, affirmed by the Supreme Court.

Mr. Justice Brandeis delivered the opinion of the Court. The first argument was that as direct physical connection with the South Shore was lacking, the order in effect required the three railroads to extend their lines without the necessary certificate of convenience from the Commission, and that there could here be no unjust discrimination because they could grant the switching service only by obtaining the consent of the intervening carrier. The learned Justice said:

The order does not require the steam railroads to extend any service to the South Shore. It leaves them free to remove the discrimination by any appropriate action. (Citing cases.) Direct physical connection with the carrier subjected to prejudice is not an essential. (Citing case.) Unjust discrimination may exist in law as well as in fact, although the injury is inflicted by a railroad which has no such direct connection. Wherever discrimination is, in fact, practiced, an order to remove it may issue; and the order may extend to every carrier who participates in inflicting the injury.

The railroads pointed to differences in importance and character of the business done by their lines from that done by the small electric line, chiefly a passenger carrier, and contended that therefore the switching service shared by the steam lines was essentially dissimilar from that which would be furnished the South Shore. To this contention the learned Justice replied:

Despite these facts, the Commission found that the circumstances and conditions were similar. The court cannot substitute its judgment for that of the Commission. (Citing case.) The alleged lack of reciprocity and the other facts stated do not constitute, as a matter of law, differentiating circumstances which negative discrimination.

The contention that the order in effect compelled the steam roads to permit the South Shore to

take part of the business theretofore handled by them and hence took their property without due process of law, was dismissed by reference to some of the numerous recent cases in which this exact contention had been considered and rejected. Finally, the learned Justice took up and rejected the argument that the record failed to show that the South Shore was engaged in a general transportation of freight. He said:

> Since the decision of this case below, it has been held by this Court that the Commission has power to prevent unjust discrimination practiced by an electric railroad against a steam railroad engaged in interstate commerce, even if the electric line is neither operated as part of a steam railway system nor engaged in the general transportation of freight in addition to its passenger and express business. (Citing case.) It is insisted, however, that the limitation contained in Section 418 applies, because in this case it is the electric line which is seeking relief. The contention is groundless. Moreover, the Commission found that the South Shore is also engaged in the general transportation of freight. Its finding is necessarily conclusive as the evidence taken before the Commission was not introduced below.

Argued by Mr. C. C. Hine for appellants, Mr. Blackburn Esterline for the U. S., Mr. R. Granville Curry for the Interstate Commerce Commission, and by Ernest S. Ballard for the Chicago, Lake Shore and South Bend Ry.

Carriers,—Federal Control

In order to recover compensation for the taking possession and use by the Government of a railroad, the company must prove the value of the use taken or the damage suffered. A report of a board of referees awarding the "standard return" does not relieve the railroad of making such proof where it is based on no evidence of pecuniary loss.

Marion & Rye Valley Railway Co. v. United States, Adv. Ops. 290, Sup. Ct. Rep. v. 46, p. 253.

Suit was brought by the Marion & Rye Railway Company, operating a short-line railroad, to recover $14,425.94 as compensation for the alleged taking possession and use by the Government of its road during the period of Federal Control. A board of referees appointed pursuant to Section 3 of the Federal Control Act appointed this sum. The Government denied liability. The Court of Claims supported the Government's contentions that there had been only a technical taking and that the company was entitled to no compensation because it had suffered no pecuniary loss. Judgment for the Government was affirmed by the Supreme Court.

Mr. Justice Brandeis delivered the opinion of the Court. In stating the facts he made it clear that during the alleged Federal control the railroad had been run without any interference by the Government and had carried the same amount and kind of traffic as before. The company's contention was that the Federal Control Act prescribed a definite amount of compensation based upon the average annual railway operating income for the previous year. But the learned Justice said:

> The provision did not establish a rule of compensation. The President was not permitted to agree to pay more, but he was left free to refuse to pay that sum. The carrier was left free to reject any offer that might be made. Where no agreement was reached, the carrier was relegated by Section 3 to proceedings for ascertaining the amount of just compensation. The question thus becomes one of determining the "just compensation" for the use taken or damage done. If Congress had intended that the "standard return" should be taken as the measure of just compensation, in any event, there would have been no occasion for a hearing before a board of referees. The amount so payable could have been determined by calculation from the "average" annual railway operating income which, by Section 1 of the Federal Control Act, p. 452, the Interstate Commerce Commission itself was required to ascertain and to certify to the President.
>
> Thus, the fact that the right to recover compensation is a statutory one, did not relieve the railroad from the burden of proving the value of the use taken from the company or the damage suffered by it under rules ordinarily applicable to takings by eminent domain.

Furthermore, he held that as the board of referees had simply adopted as its measure of compensation the so-called "standard return" of the Act, without hearing any evidence as to whether the alleged taking had occasioned the company any pecuniary loss, its report rested wholly upon assumptions and did not relieve the company from the necessity of proving actual loss.

Argued by Messrs. Ben B. Cain and Milton C. Elliott for appellant and Mr. A. A. McLaughlin for appellee.

Taxation,—State Inheritance Taxes

The statute of North Carolina which seeks to impose an inheritance tax on shares of stock of a non-resident in a foreign corporation, licensed to do business in that state, is invalid, although two-thirds of its property is located there. The stockholder does not own the corporate property. Jurisdiction for tax purpose over the shares cannot, therefore, be made to rest on the situs of part of the corporate property within the taxing State.

Rhode Island Hospital Trust Co. v. Doughton, Adv. Ops. 355, Sup. Ct. Rep. v. 46, p. 256.

Suit was brought by the executor of a resident of Rhode Island to recover a tax paid under protest and imposed upon the transfer of shares owned by decedent in a New Jersey corporation which had been licensed to do business in North Carolina. The shares were not located in North Carolina, and decedent had never resided there. The tax was imposed pursuant to a North Carolina statute taxing shares in foreign corporations, no matter by whom held, where at least one-half of the property of the corporation is located within that State. Judgment entered by the trial court for the state taxing authorities was affirmed by the state Supreme Court. The executor brought the case to the Supreme Court of the United States by writ of error, and there judgment was reversed.

The CHIEF JUSTICE delivered the opinion of the Court. The question was defined and decided in the following words:

> The question here presented is whether North Carolina can validly impose a transfer or inheritance tax upon shares of stock owned by a non-resident in a business corporation of New Jersey, because the corporation does business and has two-thirds of its property within the limits of North Carolina. We think that the law of North Carolina, by which this is attempted is invalid. It goes without saying that a state may not tax property which is not within its territorial jurisdiction. (Citing cases.)
>
> The tax here is not upon property, but upon the right of succession to property, but the principle that the subject to be taxed must be within the jurisdiction of the state applies as well in the case of a transfer tax as in that of a property tax. A state has no power to tax the devolution of the property of a non-resident unless it has jurisdiction of the property devolved or transferred. In the matter of intangibles, like choses in action, shares of stock and bonds, the situs of which is with the owner, a transfer tax, of course, may be properly levied by the state in which he resides. So, too, it is well established that the state in which a corporation is organized may

provide in creating it for the taxation in that state of all its shares, whether owned by residents or non-residents. (Citing cases.)

In this case the jurisdiction of North Carolina rests on the claim that because the New Jersey corporation has two-thirds of its property in North Carolina, the State may treat shares of its stock as having a situs in North Carolina to the extent of the ratio in value of its property in North Carolina to all of its property. This is on the theory that the stockholder is the owner of the property of the corporation, and the state which has jurisdiction of any of the corporate property has *pro tanto* jurisdiction of his shares of stock. We can not concur in this view. The owner of the shares of stock in a company is not the owner of the corporation's property. He has a right to his share in the earnings of the corporation, as they may be declared in dividends, arising from the use of all its property. In the dissolution of the corporation he may take his aliquot share in what is left, after all the debts of the corporation have been paid and the assets are divided in accordance with the law of its creation. But he does not own the corporate property.

In conclusion the learned CHIEF JUSTICE briefly referred to and rejected a view advanced by the state Supreme Court that the corporation had "been domesticated" in North Carolina. It had not been re-incorporated in North Carolina; it was still a foreign corporation.

Argued by Mr. John M. Robinson for plaintiff in error and Mr. Dennis G. Brummitt for defendant in error.

Taxation,—State Inheritance Taxes, Gifts in Contemplation of Death

That part of the Wisconsin act imposing graduated taxes on transfers, which declares that every transfer made within six years prior to the death of the grantor without an adequate valuable consideration shall be construed to be made in contemplation of death, is discriminatory and void, there being no adequate basis for such discrimination between gifts inter vivos. Nor can the tax be sustained on the ground of the necessity to prevent evasion of inheritance taxes.

Schlesinger et al. v. State of Wisconsin et al., Adv. Ops. 301, Sup. Ct. Rep. v. 46, p. 260.

The executors and children of a decedent resident of Wisconsin appealed from a court order imposing inheritance taxes upon four gifts made by the decedent to his wife and children within six years before his death. The tax was imposed pursuant to that section of the Wisconsin inheritance tax law declaring every transfer made within six years prior to the death of the grantor, of a material part of his estate, without an adequate valuable consideration, to be construed to have been made in contemplation of death and taxable as such. A decision of the State Supreme Court held that this section raised not a mere *prima facie* presumption of fact, but a conclusive presumption that the gift was made in contemplation of death, irrespective of the actual intent. The Supreme Court of Wisconsin applied this rule in the present case and affirmed the judgment of the lower court. The case was brought to the Supreme Court of the United States by writ of error, and there the judgment was reversed.

Mr. Justice McReynolds delivered the opinion of the Court. Reviewing the opinion of the state court, he said:

> The Supreme Court of the State said: "The tax in question is not a property tax but a tax upon the right to receive property from a decedent. It is an excise law." "Such (legislative) intent was to tax only gifts made in contemplation of death. That is the only class created. The legislature says that all gifts made within six years of the donor's death shall be construed to be made in contemplation of death" (which means), "that they shall conclusively be held to be gifts made in contemplation of death and shall fall within the one taxable class of gifts created by the legislature."

He then said:

> The court below declared that a tax on gifts *inter vivos* only could not be so laid as to hit those made within six years of the donor's death and exempt all others—this would be "wholly arbitrary." We agree with this view and are of opinion that such a classification would be in plain conflict with the Fourteenth Amendment. The legislative action here challenged is no less arbitrary. Gifts *inter vivos* within six years of death, but in fact made without contemplation thereof, are first conclusively presumed to have been so made without regard to actualities, while like gifts at other times are not thus treated. There is no adequate basis for this distinction. Secondly, they are subjected to graduated taxes which could not properly be laid on all gifts or, indeed, upon any gift without testamentary character.

Nor was he able to sustain the provision as necessary in order to prevent evasion of inheritance taxes:

> Rights guaranteed by the federal Constitution are not to be so lightly treated; they are superior to this supposed necessity. The State is forbidden to deny due process of law or the equal protection of the laws for any purpose whatsoever.
>
> A classification for purposes of taxation must rest on some reasonable distinction. A forbidden tax cannot be enforced in order to facilitate the collection of one properly laid.

Mr. Justice Holmes, at a session of the Court just preceding his eighty-fifth birthday, delivered a dissenting opinion characteristic of him both in phrasing and in legal viewpoint. He said in part:

> If the Fourteenth Amendment were now before us for the first time I should think that it ought to be construed more narrowly than it has been construed in the past. But even now it seems to me not too late to urge that in dealing with state legislation upon matters of substantive law we should avoid with great caution attempts to substitute our judgment for that of the body whose business it is in the first place, with regard to questions of domestic policy that fairly are open to debate.
>
> The present seems to me one of those questions. I leave aside the broader issues that might be considered and take the statute as it is written, putting the tax on the ground of an absolute presumption that gifts of a material part of the donor's estate made within six years of his death were made in contemplation of death. If the time were six months instead of six years I hardly think that the power of the State to pass the law would be denied, as the difficulty of proof would warrant making the presumption absolute; and while I should not dream of asking where the line can be drawn, since the great body of the law consists in drawing such lines, yet when you realize that you are dealing with a matter of degree you must realize that reasonable men may differ widely as to the place where the line should fall. I think that our discussion should end if we admit what I certainly believe, that reasonable men might regard six years as not too remote.

With this dissenting opinion Mr. Justice Brandeis and Mr. Justice Stone concurred.

Argued by Mr. Charles F. Fawsett for plaintiffs in error and by Mr. Franklin E. Bump for defendant in error.

Taxation,—State Taxes on Rolling Stock

The Louisiana statutes imposing a tax on rolling stock of railroads not domiciled in the State in lieu of local taxation is not discriminatory, although equality in operation of the two taxes is not exactly attained.

General American Tank Car Corporation et al. v. Day, Adv. Ops. 239, Sup. Ct. Rep. v. 46, p. 234.

The Louisiana Laws of 1921 impose a tax, additional to the general tax on all property within the

State, of twenty-five mills on the dollar on all rolling stock of non-resident railroad corporations having no domicile within the State. A section of the Louisiana constitution exempts from all local taxation non-residents paying the twenty-five mill tax. Certain companies, not resident or domiciled in Louisiana, but operating tank cars through the State, brought suit to enjoin the collection of the tax as to their rolling stock upon the ground that the tax discriminated unreasonably between residents of Louisiana or non-residents domiciled within the State, and non-residents not so domiciled and engaged in interstate commerce. The companies made the assertion that the average of all local property taxes was only twenty-one mills on the dollar. The District Court for the Eastern District of Louisiana dismissed the bill, and upon direct appeal (under the Judicial Code before recent amendment) the decree was affirmed.

Mr. Justice Stone delivered the opinion of the Court. The first contention and the Court's answer thereto were stated in the following paragraphs:

> It is argued that the twenty-five mill tax which was imposed on tank cars belonging to the several appellants, is a thinly disguised attempt to compel non-residents doing interstate business in Louisiana to declare a domicile in the State, and that it is therefore an unconstitutional burden on interstate commerce, within the principle of those cases holding that a State may not require a non-resident to procure a license to do business or to declare a domicile within the State as a condition to engaging in commerce across its boundaries. (Citing cases.) But it is obvious from an inspection of the statute that the tax in question is imposed on property of non-residents in lieu of the local tax assessed in the several parishes of the State on property of persons or corporations domiciled there, and that the non-resident may either pay the state tax assessed under Section 5 or, at his option, by becoming domiciled in a parish, pay instead of it the local taxes assessed within the parish. The effect of Section 5 is not to require the non-resident corporation to take out a license to do business within the State, but only to subject its property within the State to state taxation.

Passing to the question whether the tax discriminated substantially against appellants, he said:

> Where the taxing statute which is in lieu of a local tax assessed on residents, discloses no purpose to discriminate against non-resident taxpayers, and in substance does not do so, it is not invalid merely because equality in its operation as compared with local taxation has not been attained with mathematical exactness. In determining whether there is a denial of equal protection of the laws by such taxation, we must look to the fairness and reasonableness of its purposes and practical operation, rather than to minute differences between its application in practice and the application of the taxing statute or statutes to which it is complementary.

Finally, he considered the record and from the facts there set forth concluded that a discrimination in practical operation of the tax had not been demonstrated by the companies.

Argued by Mr. Sigmund W. David for appellants and by Mr. Harry P. Sneed for appellees.

Special Assessments,—Drainage

Where an original drainage district must be formed on the petition of the owners of a majority of the acreage involved, there is no unconstitutional discrimination in not leaving it to a similar majority to determine whether the district shall be enlarged by the inclusion of other lands.

Cole et al. v. Norborne Land Drainage District of Missouri et al. Adv. Ops. 216, Sup. Ct. Rep. v. 45, p. —.

Owners of land included within a Missouri drainage district brought suit to restrain the collection of a tax levied upon them to pay for the improvements. The plaintiffs' lands were added to a district already established. It was admitted that this original district had been properly established. But it had been established, as the statute required, upon the petition of the owners of a majority of the acreage in lands contiguous to the drainage ditch, whereas the enlargement of the district had been merely upon petition of the supervisors of the district. The contention was that there was an unconstitutional discrimination in not leaving the enlargement to a similar majority. But the District Court for the Western District of Missouri thought not, and upheld the inclusion of plaintiffs' lands. Upon appeal to the Supreme Court, judgment was affirmed.

Mr. Justice Holmes delivered the opinion of the Court. He said:

> The original incorporators take the risk of a plan and agree to pay for it while as yet they do not know exactly what the plan will be or what the benefits. If after the plan is made and started it becomes obvious that other contiguous land will be benefited, it is just that such land should help to pay the bills. But only an Eighteenth Century faith in human nature could expect that the owners would vote to come in and pay their shares when they would get the same benefit if they stayed out. The discrimination is justified by the change in position at the later time.

The case was argued by Messrs. M. J. Henderson and Cyrus Crane for the land owners and by Messrs. William A. Franken and S. J. Jones for the local authorities.

CURRENT LEGISLATION

The Revenue Act of 1926

By Middleton Beaman

THE Revenue Act of 1926 has received public attention chiefly on account of its sweeping tax reductions. It also contains a number of provisions making important changes in the technical and administrative features of the revenue laws, which are briefly described herein.

Partial Liquidation

The Revenue Act of 1924 in section 201 (c) provided that amounts distributed in partial liquidation shall be treated as payment in exchange for the stock and the resulting gain and loss to the distributee would in cases where the stock retired was held for more than two years, be taxed as a capital gain. Under this provision it was urged by many that a corporation having a surplus might be able, by retirement of stock, practically to bring about a tax-free distribution. If a corporation has a capital stock of $100,000 and a surplus of $50,000 and practically all the stock is held by two men, if the surplus were declared in a cash dividend it would be taxable at full surtax rates; but if one-half the stock was retired for cash it was claimed that this fell under section 201 (c). It is obvious that the transaction would be in all senses the equivalent of a distribution of a cash dividend of the surplus. The new Act while continuing the provisions of section 201 (c) adds in section 201 (g) a provision to make clear that such a transaction would be taxable in the same manner as a cash dividend. In order to prevent cases of hardship, it is provided that in the case of the redemption of stock not issued as a stock dividend the new provision shall apply only if the redemption is made after January 1, 1926. As stated by House Conferees in their report, the provision is not to apply in cases of complete liquidation of stock, nor to one of a series of distributions in a complete liquidation which is bona fide carried out.

Determination of Amount of Gain or Loss

Section 202 (b) of the Act cures a defect in the Revenue Act of 1924 which provided that in case of a sale of property acquired before March 1, 1913, in computing the basis for determining gain or loss proper adjustment should be made for depreciation, etc., "previously allowed." Prior to March 1, 1913, there was no income tax and in cases where property was acquired before that date no depreciation has been "allowed" and, therefore, no diminution of the basis is provided for in such cases by the 1924 Act. The new law specifically provides, in the case of property acquired before March 1, 1913, that the cost shall be diminished by depreciation, etc., actually sustained before that date.

Basis for Determining Gain or Loss in Case of Revocable Trusts

The new Act in paragraphs (3) and (5) of section 204 (a) makes clear a disputed point under the 1924 Act, and provides that where property is transferred in revocable trust the basis for determining gain or loss in case of a sale by the trustee shall be the same as the basis that the property had in the hands of the grantor.

Depletion of Oil and Gas Wells

The Act makes a sweeping change in the method of computing the depletion deduction in the case of oil and gas wells. Under the Revenue Act of 1924 and prior Revenue Acts, depletion in such cases was based on so-called discovery value,—that is, if a man bought a tract of land for $5,000 and struck oil and the property immediately jumped in value to $1,000,000, he could use the $1,000,000 as a basis for computing his depletion allowance. This provision had been gradually narrowed down since its original enactment in 1918, but was still thought to grant too large benefits to the oil and gas interests. The new Act abolishes the discovery value provisions and substitutes an arbitrary allowance for depletion of 27½% of the gross income from the property during the taxable year, but not to exceed 50% of the net income from the property.

Capital Gains and Losses

Under the 1924 Act, as well as the new Act, a taxpayer is subject to the 12½% capital gain or loss provisions only if the capital assets sold or exchanged have been held by the taxpayer for two years. Questions arose as to the method of computing the two-year period in the case of stock exchanged on a reorganization. The Act in section 208 (a) provides, in the case of a tax-free exchange of stock, that the period for which the old stock was held shall be added to the period for which the new stock is held for the purpose of computing the two-year-old period. The same provision is made in the case of property received by gift after December 31, 1920, which under the law has the same basis in the hands of the donee as it had in the hands of the donor. It is provided that the period for which the property was held by the donor shall be added to the period for which held by the donee. A similar provision is made in the case of stock received upon a distribution where no gain is recognized to the distributee under section 203 (c) of the Act, which provides for a tax-free distribution, on a reorganization, to a shareholder in a corporation a party to the reorganization of stocks or securities in any corporation involved in the reorganization. In such cases, for the purpose of computing the two-year period, there shall be included the period for which the stockholder held the stock the possession of which entitled him to the stock distribution. This would also cover the case of stock dividends, so that in determining whether or not stock received as a stock dividend

has been held for two years there shall be added the period for which he held the old stock.

Annuity Contracts

As construed by the Treasury, the 1924 Act did not exempt payments under a life insurance, endowment or annuity contract to a person other than the insured, although payments to the insured, as a return of premiums, were exempt. Section 213 (b) (2) of the Act extends the exemption to the beneficiary so that the annual payments become taxable only when in excess of the total premiums paid.

Foreign Trade Exemption

Earnest efforts for many years to obtain exemption from income tax for persons carrying on business in foreign countries, resulted in the insertion in the new Act of a provision which takes a short step in the direction of encouragement to foreign trade. Section 213 (b) (14) provides, in the case of an individual citizen of the United States who is a bona fide non-resident of the United States for more than six months during the year, there shall be exempt from tax income received from sources without the United States which come within the definition of "earned income." This means, generally, amounts received as wages, salaries, professional fees, and other compensation for personal services. All amounts received as compensation for personal services performed without the United States are considered as income derived from sources without the United States, even though the employer is located in the United States.

Installment Sale

The regulations of the Treasury Department have permitted a dealer in personal property who operates on the installment plan to include in his taxable income as gain that proportion of the installment payments received during the year which the total profit bears to the total contract price. Regulations also provide that in the case of casual sales of personal property or in the case of any sale of real property, the same rule shall be applied if the initial payments do not exceed one-fourth of the purchase. Doubt as to the validity of these regulations arose through a decision of the Board of Tax Appeals, and the new law in section 212 (d) incorporates the substance of the regulations, and sections 1208 makes the provision retroactive as far back as the Revenue Act of 1916. The provision applies to both individuals and corporations.

Evasion of Surtaxes by Incorporation

Under section 220 of the Revenue Act of 1924, re-enacted in the new Act, if a corporation accumulates its profits to avoid the imposition of the surtax upon its shareholders, the corporation is liable to a tax of 50% of its net income, including dividends received from other corporations. The new Act adds a provision that this tax shall not apply if all the shareholders of the corporation at the time of filing their returns include their entire distributive share, whether distributed or not, of the net income of the corporation, and pay tax thereon at full surtax rates. If the earnings on which the tax has been paid by the shareholders are subsequently distributed by the corporation to a shareholder who paid the tax, he is exempt from tax a second time. It is not believed that this provision of the law can be taken advantage of except by closely held corporations.

Extension of Time for Filing Returns

Under the 1924 Act the Commissioner of Internal Revenue could grant extension of time for filing income tax returns only if application was made by the taxpayer before the date prescribed for filing the return. This involved granting of individual applications in a large number of cases, and the new Act, section 227, restores the law as it existed before the 1924 Act and permits the Commissioner to grant extensions under rules and regulations by the Department.

Publicity of Returns

The provision of the 1924 Act for the posting in the offices of collectors of internal revenue of the amount of income tax paid by each taxpayer, is repealed by the new Act. The provision permitting inspection of returns by certain committees of Congress is retained, and there is added to the list of committees given this right any joint committee of the two houses authorized by concurrent resolution. Provision is also made for furnishing certified copies of a return to any person who has the right to inspect the return.

Allocation of Income Between United States and Its Possessions

Section 217 (e) of the 1924 Act and of the new Act provide that gains derived from the purchase of personal property within and its sale without the United States, or from the purchase of personal property without and sale within the United States shall be treated as derived entirely from sources within the country in which sold. This resulted in many cases in the imposition of a tax upon 200% of the income in case of dealings with our possessions. Thus, for example, Porto Rico taxed the income from the sale of tobacco purchased in Porto Rico and sold in the United States although the income was fully taxable under the Federal Income Tax Act. The new Act adds a provision permitting, under rules and regulations of the Treasury, the income from such transactions between the United States and any of its possessions to be treated as derived partly from sources within the United States and partly from sources without the United states.

Depreciation in Case of a Life Tenant

Section 214 (a) (8) adds a new provision that in case of improved real estate held by one person for life with remainder to another the deduction for depreciation shall be equitably apportioned between the life tenant and the remainderman under rules and regulations by the Treasury Department. Prior to this Act apparently neither life tenant nor remainderman was entitled to depreciation in such cases.

(To be continued)

Where the Journal Is on Sale

A list of the book and periodical stores in the various cities at which the American Bar Association Journal can be bought will be found on page 228 of this issue. Persons living in those cities are requested to address themselves to these establishments for current issues.

ARRANGEMENTS FOR DENVER MEETING

Headquarters

Cosmopolitan Hotel, 18th street and Broadway.
Capacity: 430 rooms with bath.
Rates: Single rooms, $5.00 and $6.00 per day. Double rooms, $8.00 to $12.00 per day.

Reservations and Hotel Information

For reservations and further information concerning the Cosmopolitan and other Denver Hotels listed below, address:

Miss Mabelle A. Carter, 508 Equitable Building, Denver, Colorado.

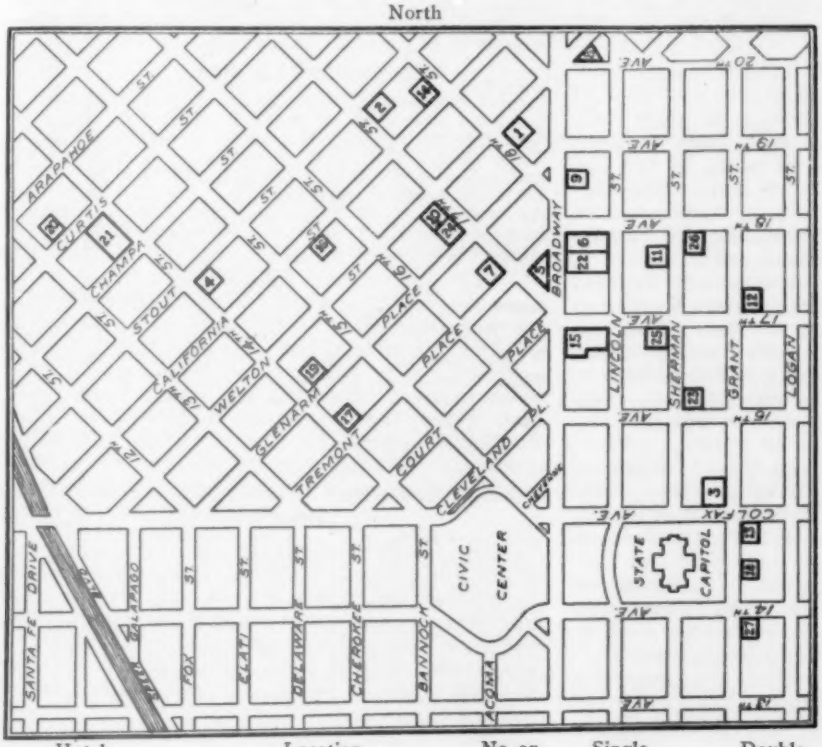
Arrangements can also be made through Miss Carter for accommodations in family hotels and furnished apartments for members bringing their families or who will spend their vacation in Denver after the meeting is over.

Reduced Rates for Denver Meeting

Summer tourist rates to Denver and the National Parks will be available in the greater portion of the United States, and amount to approximately one fare and one-tenth for the round trip. The return limit allows ample time after the close of the meeting for a vacation trip.

For Colorado and and the territory contiguous thereto, embracing Colorado, Idaho, Kansas, Montana, Nebraska, North Dakota, New Mexico, South Dakota, Utah, Wyoming, and parts of Nevada and Oregon, arrangements are being made with the Transcontinental Passenger Association for securing the usual reduction of 25%. Identification certificates will be distributed to members living in the states mentioned, in ample time to permit of their purchasing tickets for themselves and families. Further details will appear in subsequent issues of the JOURNAL.

North



Location and Rates of Denver Hotels

Hotel	Location	No. on map	Single with bath	Double with bath	Single without bath	Double without bath
Adams	18th and Welton	1	$5.00	$6.00	.....	.....
Albany	17th and Stout	2	5.00	6.00–10.00	$4.00	$5.00–6.00
Argonaut	Colfax and Grant	3	5.00	6.00	.....	.....
Auditorium	14th and Stout	4	3.50	6.00	3.00	4.00
Brown Palace	17th and Tremont	5	5.00	8.00	.....	.....
Cosmopolitan	18th and Broadway	6	5.00– 6.00	8.00–10.00	.....	.....
Colorado	17th and Tremont	7	.....	5.00	.....	3.00
Crest	20th and Broadway	8	2.00	3.00	1.50	2.50
DeSoto	1848 Broadway	9	.....	4.50	1.50	2.50
Hall	1315 Curtis	20	3.00	5.00	2.00	3.00
Kenmark	17th and Welton	10	3.00	5.00	2.50	3.50
Lancaster	18th and Sherman	26	5.00	6.00	3.00	4.00
Mayflower	17th and Grant	12	3.50	6.00	.....	.....
New House	Colfax and Grant	13	5.00	7.50	.....	3.00
Sears	18th and California	14	3.00– 5.00	5.00– 8.00	.....	.....
Shirley-Savoy	17th and Broadway	15	5.00	6.00– 8.00	3.00	4.00–6.00
Standish	1530 California	16	3.00– 6.00	5.00– 9.00	2.50– 5.00	3.50–7.00
St. Francis	14th and Tremont	17	.....	6.00	.....	4.00
Wellington	1450 Grant	18	*6.50	*10.00	*5.00	*8.50
West Court	14th and Glenarm	19	3.50	6.00	2.50	4.00
Available Hotels Not Shown on Map						
Colburn	10th and Grant		5.00	7.00	.....	.....
Oxford	17th and Wazee		4.00	6.00	2.50	4.00
West	1337 California		2.50	5.00	1.50	3.00

*American Plan.

Special Trains to Denver

Arrangements have been made with the Chicago, Burlington & Quincy Railroad Company to run three special trains for the American Bar Association from Chicago to Denver on the following schedules:

Leave Chicago ...	6:00 P. M.	Sunday,	July 11
Arrive Denver ...	7:30 P. M.	Monday,	July 12
Leave Chicago ...	11:30 P. M.	Sunday,	July 11
Arrive Denver ...	7:15 A. M.	Tuesday,	July 13
Leave Chicago ...	5:30 P. M.	Monday,	July 12
Arrive Denver ...	7:55 P. M.	Tuesday,	July 13

Each of these trains will be equipped with the latest type club-observation cars, Pullman sleeping cars, and dining cars, and special menus will be prepared and served.

The special trains will leave from the new Union Station, Chicago, which is also the terminal of the Pennsylvania Lines, Chicago & Alton Railroad and Chicago, Milwaukee & St. Paul Railroad.

Special facilities will be provided in the station where members may meet, leave their baggage, secure information, and avail themselves of the most modern accommodations afforded to travelers during the interim between trains.

Railroad tickets should be purchased at point of departure and routed from Chicago to Denver over the Chicago, Burlington & Quincy Railroad. Provision will be made for special trains returning from Denver in the event there is sufficient demand for this service. Those contemplating traveling West from Denver can secure their return ticket over any route that suits their convenience. Those planning to return to Chicago directly after the meeting should purchase their return tickets over the Chicago, Burlington & Quincy, and in making reservations should also request Pullman accommodations for the return trip.

In order to assure adequate accommodations, members desiring to use these trains should write **at once** for their reservations, specifying kind desired (upper berth, lower berth, compartment or drawing room), and should address their request to J. R. Van Dyke, General Agent, Chicago, Burlington & Quincy R. R. Co., 179 West Jackson Boulevard, Chicago, Ill.

Connections at Chicago

The Broadway Limited, via Pennsylvania Lines, leaving New York at 2:55 P. M., Harrisburg 6:47 P. M., Pittsburgh 12:28 midnight, arrives Chicago at 9:55 A. M.

The Liberty Limited, Pennsylvania Lines, leaving Washington at 3:30 P. M., arrives Chicago 9:30 A. M.

Columbus, Logansport and intermediate points can enjoy day service on Pennsylvania train No. 33 leaving Columbus at 8:50 A. M., passing Logansport 1:50 P. M., arriving Chicago 5:00 P. M.

Along the main line of the Pennsylvania R. R. from Pittsburgh, Pennsylvania train No. 107 leaving Pittsburgh 4:52 A. M., carrying parlor cars and general high class equipment, making Canton, Massillon, Mansfield, Fort Wayne, arrives Chicago 4:55 P. M.

The Pennsylvania also has a good train from Cincinnati to Chicago, leaving Cincinnati at 8:50 A. M., making Richmond, Logansport and way stations, arriving Chicago 5:15 A. M. This train also has a connection from Indianapolis, leaving there at 11:45 A. M. and arriving Chicago at 5:15 P. M. This train also handles through cars from Louisville that leaves Louisville at 8:30 A. M.

The B. & O. Capitol Limited, leaving Baltimore 1:52 P. M., and Washington at 3:00 P. M., Pittsburgh 10:00 P. M., arrives Chicago at the Grand Central Station at 9:00 A. M.

The New York Central Twentieth Century Limited leaving New York at 2:45 P. M., Albany at 5:49 P. M., Utica at 7:43 P. M., Syracuse 8:53 P. M., Rochester 10:25 P. M., arrives Chicago, La Salle Street Station at 9:45 A. M.

The Twentieth Century connection from Boston leaves at 12:30 P. M.

The New York Central Lake Shore Limited leaving New York 5:30 P. M., Albany 9:00 P. M., Syracuse 11:08 P. M., Rochester 12:25 A. M., arrives Chicago at 4:00 P. M.

The Lake Shore Limited leaves Cleveland 8:20 A. M., Sandusky 9:55 A. M. and Toledo 11:05 A. M.

The Wolverine on the Michigan Central, leaves Detroit at 7:25 A. M., Ann Arbor 8:10 A. M., Jackson 8:57 A. M., Kalamazoo 10:41 A. M., Niles 11:34 A. M. and arrives Chicago 2:00 P. M.

The Michigan Central Chicago Special leaves Detroit at 8:00 A. M., Ann Arbor 8:49 A. M., Jackson 9:45 A. M., Albion 10:12 A. M., Battle Creek 10:43 A. M., Kalamazoo 11:19 A. M., Niles 12:21 P. M., Michigan City 1:11 P. M., arriving Chicago 2:50 P. M.

The Michigan Central Motor City Special leaves Detroit at 11:30 P. M., arrives Chicago 7:20 A. M.

Connections En Route

Leave Minneapolis, C. & N. W.	7:35 P. M.	
Leave St. Paul, C. & N. W.	8:15 P. M.	
Arrive Omaha, C. & N. W.	7:40 A. M.	next day
Leave Omaha, C. B. & Q.	7:55 A. M.	
Arrive Denver, C. B. & Q.	7:55 P. M.	
Leave St. Louis, C. B. & Q.	11:55 P. M.	
Arrive Lincoln, C. B. & Q.	5:45 P. M.	next day
Leave Lincoln, C. B. & Q.	6:00 P. M.	
Arrive Denver, C. B. & Q.	7:15 A. M.	next day

OR—

Leave St. Louis, C. B. & Q.	2:15 P. M.	
Arrive Omaha, C. B. & Q.	7:10 A. M.	next day
Leave Omaha, C. B. & Q.	7:55 A. M.	
Arrive Denver, C. B. & Q.	7:55 P. M.	
Leave Kansas City, C. B. & Q.	10:30 A. M.	
Arrive Lincoln, C. B. & Q.	5:45 P. M.	
Leave Lincoln, C. B. & Q.	6:00 P. M.	
Arrive Denver, C. B. & Q.	7:15 A. M.	next day

National Conference of Commissioners on Uniform State Laws

The Conference will meet at Denver, July 6-12 at the Brown-Palace Hotel. It is suggested that reservations be made early since the tourist travel to Denver is heavy and the hotel accommodations not large. Several important acts will be ready for discussion. Tourist rates will be available. Those desiring to go by special car from Chicago are requested to notify the Secretary.

Section and Committee Chairmen should send to the Secretary on or before May 10 reports which it is desired to have printed in time for distribution in advance of the Annual Conference.

George G. Bogert, Secretary.

University of Chicago Law School, Chicago, March 23, 1926.

Committees in Charge of Local Arrangements

The Committees in charge of the Denver meeting are as follows:

General Committee Denver Bar Association: Charles S. Thomas, Chairman; Henry McAllister, Jr., Vice-Chairman; Mary F. Lathrop, Wilbur F. Denious, Platt Rogers, William V. Hodges, Clayton C. Dorsey, Charles R. Brock, Henry J. Hersey.

Committees Colorado Bar Association:

Accommodations: Erl H. Ellis, Chairman; Miss Mabelle A. Carter, 508 Equitable Bldg., Denver, to whom requests for hotel reservations should be sent.

Courtesy: Clayton C. Dorsey, Chairman; Morrison Shafroth, Vice-Chairman.

Entertainment: Wilbur F. Denious, Chairman; Stanley T. Wallbank, Vice-Chairman.

Finance: Tyson S. Dines, Chairman; Horace N. Hawkins, Vice-Chairman; Robert L. Stearns, Secretary.

Publicity: Mary F. Lathrop.

Transportation: The Law Club, Myles P. Tallmadge, Chairman of Committee.

Secretaries of State Bar Associations are requested to communicate with Harrie M. Humphreys, Secretary, Colorado Bar Association, Equitable Building, Denver, Colorado.

MARY F. LATHROP.

CURRENT LEGAL LITERATURE

A Department Devoted to Recent Books in Law and Neighboring Fields and to Brief Mention of interesting and Significant Contributions Appearing in the Current Legal Periodicals

Among Recent Books

THE British Year Book of International Law, 1925. Sixth Year of Issue. New York: Oxford University Press, American Branch. 1925. Pp. vi, 273. Price $5.35. This excellent annual becomes, if possible, more indispensable with each succeeding issue. In addition to the usual departments devoted to notes, decisions and awards, book reviews, bibliography, and a summary of events, the current number contains no less than thirteen short articles, all well-written, and most of them dealing with timely subjects in a thoroughly scholarly fashion. Limitations of space permit only the briefest mention of a few of the more noteworthy of the articles.

The opening article entitled "The Doctrine of Air-Force Necessity" is contributed by the distinguished English authority on the law of the air, Mr. J. M. Spaight. The author deals realistically with the question of destruction by air forces of non-military property and concludes that "inevitably, so far as one can see, war on property must replace war on life." (P. 7.) "Air war will be a war on commerce, on capital, on credit. Its end will be far from being a purely military one." (P. 4.) He suggests legal limitations which seem desirable but rather difficult of attainment. Professor Brierly's discussion of "Matters of Domestic Jurisdiction" in the second article is temperate and constructive. It should be widely read in the United States where "domestic jurisdiction" has long since evolved from a problem into a fetish with which politicians conjure. Professor P. J. Baker's article on "The Obligatory Jurisdiction of the Permanent Court of International Justice" should also be of exceptional interest in the United States. "The Exercise of Criminal Jurisdiction Over Foreigners," by W. E. Beckett of All Souls College, Oxford, is a valuable esssay on a difficult topic. In another of the papers, Mr. H. H. Cleminson reproduces the text of the draft convention on maritime jurisdiction in time of peace, prepared by a committee of the International Law Association, and accompanies the text with some helpful commentary. "Expropriation and International Law," by Mr. Alexander P. Fachiri of the Inner Temple, contributes an excellent review in the light of theory and practice of the international right of a state to expropriate the property of resident aliens. Laws recently enacted in Russia, Mexico, and elsewhere give the subject an exceptional timeliness. Others of the articles merit special mention if space permitted.

If the reviewer may offer a suggestion for the improvement of the Year Book, he would observe that the department devoted to Notes might be made much more useful by expanding it to include some mention of everything noteworthy which is not covered in the articles. This could be accomplished without undue enlargement of the volume if the notes were very brief. And it would be a great advantage if the departments devoted to decisions, both national and international, were made approximately complete. In case of the national decisions, at least, this could be accomplished satisfactorily by printing only brief abstracts or syllabi.

EDWIN D. DICKINSON.

University of Michigan Law School.

International Law and International Relations. By Elizabeth F. Read. New York: The American Foundation. 1925. Pp. viii, 201. The American Foundation publishes this book in order that average American citizens everywhere may have at hand an accurate, simple, thoroughly intelligible statement of the most generally recognized principles of international law and the tendencies of international relations. The quotation is from the American Foundation's announcement and describes adequately the purpose of the volume. Those who have labored to understand and appreciate international relations will be tempted to retort that the book is neither accurate, simple, nor thoroughly intelligible. But the retort is hardly fair. The volume has been prepared as a primer for "average American citizens," assuming that such persons exist, and to this end the author has succeeded in compressing a good deal of useful though elementary information within the space of a few pages.

E. D. D.

The Follies of the Courts, by Leigh H. Irvine. Los Angeles. Times-Mirror Press. pp. 274. $2.50. This volume, written by a California journalist, attempts to show what is wrong with the criminal courts of

the American states. Although there are spots of interest, the style adopted and the absence of basic facts leads the reader to conclude that the work is of doubtful value. Chapter one is entitled "A Murderer's Paradise" and in it we find such statements as, "Even in the homes of half-wits there is an uncomfortable feeling that something is wrong with the courts from which the wickedest of murderers and like criminals constantly escape with impunity," "Uncle Sam can do nothing to improve the situation," and "Our courts have been properly described as offering comic opera entertainment for the world at large. They are the tragic failures of the age, the butt of the world's ridicule—clowns, by common consent." There are very few facts in the book, though the author has taken some illustrative material from Bar Committee reports and addresses by eminent lawyers. However, this material is poorly organized and the data is used over and over again. The author commends the work of our Federal courts and considers the English system to be above criticism, but all else is rotten. The author offers no convincing solution for our ills. Neither does he offer a solution for "legislative jackassery" in the last chapter, which is entitled "To Much Law-Making." The book is the kind which will startle the reader and it thunders criticism and condemnation, but the absence of constructive thought makes it cheap reading.

Chicago. N. F. BAKER.

Comment has already been made on several occasions on the excellent work being done by the Institute for Government Research, whose series of administrative monographs on the various government bureaus constitutes such a clear picture of the great machine as a whole. Continuing this work and to coordinate and supplement these wholly separate monographs, two more extensive volumes have recently been issued, each taking as a subject, not some one bureau, but some question running through a number of them. These are a *Manual of Accounting and Reporting for the Operating Services of the National Government*, by H. P. Seidemann (Baltimore: Johns Hopkins. Pp. 378. $5.00) and *The Statistical Work of the National Government*, by L. F. Schmeckebier (Pp. 574, $5.00). Thus the former is simply a study of the accounting methods used, of a descriptive, not a critical, nature. Similarly the latter describes where and what information is supplied through the statistical activities of the government.

Inheritance Taxation, 4th ed., by L. B. Gleason and A. Otis, Albany: M. Bender & Company. Pp. lxxi-1461. $15.00. The third edition of this work, shortly after its appearance in 1922, was given a favorable notice in this JOURNAL, and comment was then made on the rapid change and growth of material, both statute and case, since its appearance in the second edition. The same remarks are just as appropriate to the present volume. If anything, the rate of growth seems even more rapid. It is, of course, to be regretted that the changes wrought by the Revenue Act of 1926 are not in its covers, but this does not remove the importance even now of the prior act. Furthermore, the state acts are almost the more important in any event. A sweeping change has been made in the presentation of the material. Instead of a grouping under a few main subject headings and nothing more, this general part is now preceded and followed by discussions of the laws of particular jurisdictions. Just as before, the primary appeal is to the practicing lawyer who wishes a tool to aid him in a definite task, rather than to the student whose interest is more theoretical.

Clark, Boardman & Co., New York, are the publishers of *A Treatise on Delaware Corporation Law*, by Robert Penington (pp. 512. $10.00). Its function is to give any information which may be needed by those having to deal with the corporation law of that state. The pertinent statutes (including those on receivers and the dissolution of corporations) are printed section by section, with extensive text discussion and citation of authorities under each. The latter also include notes in L. R. A. and A. L. R. Supplements are promised, to keep the book up to date. There is also an extensive collection of appropriate Delaware forms.

The Italian Immigrant and Our Courts, by J. H. Mariano. New York: Christopher Pub. House. Pp. 83. $1.00. In this little book the author, a member of the New York bar, tries to present the principal problems which confront one of our main racial groups, so far as they affect its relations with the law. He argues for a more tolerant and sympathetic approach on the part of the rest of the community, and at the same time points out to the Italian group what may fairly be asked of them themselves, toward a more effective orientation to American conditions. The booklet is very readable, despite sloppy proof-reading and a jerky style resulting from injudicious and excessive paragraphing.

We have already called attention to the appearance of law manuals for the members of various professions or trades, planned to give them a general and elementary idea of what the law is, so far as it concerns their occupation. The most recent of these is *Public Health Law*, by James A. Tobey, published by Williams & Wilkins Company. (Baltimore, 1926. Pp. 304. $4.50.) The audience here addressed consists of the growing group of workers in public health, sanitation, mental hygiene, etc. Mr. Tobey seems to have done very well in the extent to which he has realized that the needs of such readers cut through many fields which to the lawyer have no interconnection at all. Thus he deals with constitutional law, evidence, administrative law, the drafting of legislation, the sources of law, the use of law books, and other equally divergent topics. This dispersion of subject simultaneously heightens its usefulness for its primary purpose and renders somewhat less likely its use by lawyers. Worth noticing is the effort of the publishers to stimulate pride of craftsmanship by inserting, at the end of the book, a list of all those employees who were concerned in its physical production.

In fifty-five small pages of text the State Publishing Company, Columbia, S. C., present a volume entitled *The Law of the Road*, by S. M. Wolfe, the price of which is $2.00, and in which the reader will find expounded for his benefit (among many other things) the law of torts, insurance law, the principles of agency, search and seizure, attachment, a digest of statutes, license provisions, how to take care of your engine, ditto of your tires, and a series of "Dont's" whose profound wisdom is exemplified by one of them: "Don't start without sufficient gasoline in the tank." One more might be added, for the author's own benefit, don't race your engine. The price seems high for such a little thing, but look at all you're getting!

E. W. PUTTKAMMER.

Leading Articles in Current Law Reviews

Harvard Law Review, March (Cambridge, Mass.)—The Power of the Supreme Court to Review State Decisions in the Field of Conflict of Laws, by E. Merrick Dodd, Jr.; Jurisdiction Over Non-resident Motorists, by Austin Wakeman Scott; The Business of the Supreme Court of the United States—A Study in the Federal Judicial System—IV, Federal Courts of Specialized Jurisdiction, by Felix Frankfurter.

California Law Review, March (Berkeley, Cal.) The Legal Status of the California Indian (Concluded), by Chauncey Shafter Goodrich; Consideration and The Law of Trusts, by Robert L. McWilliams; Storage of Water in California by Riparians and Appropriators, by Joseph C. Sharp.

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PROVISION IN WILL FORFEITING SHARE OF CONTESTING BENEFICIARY

Confusion of Authority on the Subject—Question from Public Policy Standpoint—Operation of Provision When Annexed to Devise or Legacy—Exceptions to Operation of Provision Considered*

By Milton J. Keegan
Of the Denver, Colorado, Bar

ANY subject in connection with wills is apt to be rather dry, even though the industrious prying into family histories in the average will contest sometimes does make the court's statement of facts a bit racy.

Everyone, during the short span of his lifetime, acquires more or less property which he cannot take with him on the great adventure. The only consolation in the law is that, by his will, a man can determine how his property can be enjoyed by others after he is in his grave. And, while some, like old Euclia in Pope, cannot endure the thought of parting with their possessions, even post mortem, and die intestate, most men of property leave wills.

This, in some measure, satisfies one of the great weaknesses of mankind, namely, to have a hand in the control of terrestrial affairs after he has severed relations with them. And, if a testator chooses to leave his property to definite beneficiaries, he can control its disposition for a generation or two. Further, by a trust for charitable purposes, his dead hand may grip it almost forever.

But these rights of testamentary disposition are not given by natural or Divine law, and are given with reservations. And there are quite often disappointed relatives and other expectant objects of bounty, who are quite enthusiastic about attempting to pry open the grip of the testator's dead hand on the property he once owned, and place the disposition of it in the hands of a living judge, or twelve men,—tried and true.

The difficulties which beset a testator are perhaps augmented by the modern prevalence of divorce and remarriage. A will dispensing peace and harmony among several widows, ex-widows, their respective children and step-children, is no imaginary diplomatic problem. The menace of the modern flapper to wealthy widowers in their dangerous forties, or more dangerous sixties and seventies, is partly offset by the few conservative men who in anticipation of danger, get an antenuptial agreement drawn and carry it about in their inside coat pocket for protection. But, for the most part, no such precaution is taken, and the responsibility is too often placed on the court and a jury of his peers, after he has departed. Of course, the problem may, and often does arise, where a testator wills part of his estate to some charity to the disappointment of his relatives.

The practice of anticipating such trouble and inserting an affirmative defense in a will to the effect that any beneficiary who contests the will forfeits his share, is not new. Since lawyers are, from time to time, interested either in tightening the grip of the testator's dead hand, holding it steady, or prying it loose, the effect of such a forfeiture provision should be of some interest.

At the outset we will quote the law in this field as laid down by Prof. John Rood in "Wills" (1904) page 416. This statement is a great favorite and is often found by an attorney when under pressure of determining an immediate plan of action. Prof. Rood's statement is:

> The law relating to conditions in wills imposing forfeitures of benefits thereunder on those contesting the will is in a state of confusion in England and America.

The field has not been passed upon by the Colorado Supreme Court, so, for enlightenment we must look to the common law, and the decisions of our own other forty-eight mutually independent courts of last resort,—sometimes accused of converting aforesaid judicial forest into a jungle.

Judge Ketcham, in re Wall, N. Y. Surr. 1912, (136 N. Y. S. 452) became rather dramatic about it. He attempts to review the rules laid down in this field, and says:

> Each of the propositions stated, supra, has found both approval and rejection. (Citing some twenty cases and texts.)

Then he summarizes:

> Out of this confusion of authority there can come only a balanced negation, an equality of sounds which produce silence. There is a precedent for every inconsistent solution of the question, but prescript for none.

The field will be reviewed in the following order:

1. Validity of such a clause generally from the standpoint of public policy.
2. Operation of the provision, including (a) When annexed to a devise and (b) When annexed to a legacy.
3. Exceptions to the operation of the provision, including (a) Where annexed to a legacy without gift over on breach. (b) Where probable cause for litigation exists. (c) Where contestant is an infant. (d) Where forfeiture extends to parties other than contestant.

Taking up first the validity of such a clause generally from the standpoint of public policy. Two cases will be quoted briefly, which at least will show how jurists learned in the law can come to diametrically opposite conclusions with convincing logic, each claiming to be fortified by the United State Supreme Court.

*Address delivered before Denver Law Club.

The following case would declare such provisions void.

In Mallet vs. Smith, S. Car. 1853, (60 Am. Dec. 107), one Hacket died leaving a will with a forfeiture clause "should any of the legatees under this, my will, complain, or express any dissatisfaction with any disposition of my estate herein." A sister, whom he willed $2,000, not only complained but expressed her dissatisfaction by contesting the will.

While the decision needed go no further than to hold the provision void because there was no gift over, Chancellor Wardlow said:

> I express my own opinion, in which Chancellor Johnston fully concurs, that a condition subsequent of this description is void, whether there is a devise over or not, as trenching the "liberty of the law" . . . and violating public policy. In Morris vs. Burroughs . . . Lord Hardwicke held such a condition to be clearly in terrorem, and that no forfeiture could be incurred by contesting any disputable matter in a court of justice. . . . The policy of the state prevents a testator from making the continuance of an estate depend on the legatee's committing a crime, or refraining to do that which it is or may be the interest of the state that he should do, such as that he should not marry, should not engage in commerce, should not plow his arable land. . . . It is the interest of the state that every legal owner should enjoy his estate, and that no citizen should be obstructed by the risk of forfeiture from ascertaining his rights by the law of the land. . . .
>
> It is against the fundamental principles of justice and policy to inhibit a party from ascertaining his rights by appeal to the tribunal established by the state to settle and determine conflicting claims.

The extreme opposite view is taken by the California courts, which hold such a condition valid even though there is probable cause to contest the will and even though it applies to a legacy without a gift over.

In re Hite's Estate, Calif., 1909, (155 Cal. 436, 101 Pac. 443) a will provided that if any heirs or devisees, etc., contested the will, they should receive no part of the estate. One Etta Gross was given $5,000 under the will, but by a codicil the legacy was reduced to $2,000. She contested the codicil on ground of undue influence, but later withdrew the contest on a supposed compromise for $2,500. However, the court held her action worked a forfeiture of her entire legacy, saying:

> It is to be observed that a condition such as this, not only does no violence to public policy, but meets with the approval of that policy. . . . Public policy . . . deplores litigation. "Interest reipublicae ut sit finis litium," and the great statute of frauds and perjuries, and the laws limiting the time of the commencement of actions, with many others . . . are all designed to give repose and security by preventing litigation. . . . The state has no interest whatever, apart from the interest of the parties themselves. . . . It matters not to the state whether the land is enjoyed by the heir or by the devisee; and . . . the law leaves parties to make just what contracts or engagements they may think expedient as to raising or not raising questions of law or fact among themselves. The reasons why such provisions are upheld as part of sound public policy cannot be more aptly stated than in the language of the Supreme Court of the United States, in Smithsonian Institution vs. Meech . . . where the matter was discussed in the following language: ". . . Experience has shown that, even after the death of a testator, unexpected difficulties arise; technical rules of law are found to have been trespassed upon; contests are commenced wherein, not infrequently, are brought to light matters of private life that ought not to be made public, and in respect to which the voice of the testator cannot be heard, either in explanation or denial, and as a result, the manifest purpose of the testator is thwarted. It is not strange, in view of this, that testators have desired to secure compliance with their dispositions . . . and have sought to incorporate provisions which should operate most powerfully to accomplish that result."

These contrasted views on the public policy aspect of such a provision must be qualified by stating that practically all courts agree the condition is valid in some instances. The above excerpt that would hold all such provisions void on grounds of public policy, is of more than academic interest, however, as the reasoning there given is the source of the rather numerous excuses courts have found for not enforcing the forfeiture.

We will next take up the operation of the provision when annexed to a devise and when annexed to a legacy.

When annexed to a devise, the courts, with practically no exceptions, have held the forfeiture effective unless circumstances have brought the case within the exceptions (1) Where probable cause of contest exists, and (2) where contestant is an infant. This rule, with the above qualifications, is submitted as sound. However, a few courts, for example, California and New Jersey, do not recognize the probable cause exception, and Kentucky apparently would not recognize the exception where contestant is an infant.

When the provision is annexed to a legacy and is followed by an express gift over to some less bellicose beneficiary or to charity, in case of breach, the decided weight of authority is that in absence of probable cause, or where contestant is an infant, the forfeiture is effective. Some courts even deny these exceptions.

In regard to exceptions which courts have recognized: When the provision is annexed to a legacy without any gift over, in case of breach, there is a long line of precedents holding the forfeiture provision is not operative.

This exception really hasn't much foundation in logic and the criticism of it by the California Supreme Court has some merit.

In re Hite's Estate, Calif., 1909, (101 Pac. 443) held a contest worked the forfeiture of a legacy, though there was no gift over in the will.

The court said:

> It is recognized that a forfeiture of land devised will result under such circumstances, without a specific devise over. That decisions in abundance may be found holding that the same rule does not apply in cases of a legacy is an anomaly in the law of wills. It rests upon no substantial distinction. It was not part of the common law as such, but came to be recognized in England by the chancery courts to preserve uniformity, since legacies could be sued for and recovered in the ecclesiastical courts which followed the rules of the civil law. . . . The result in England has been that the courts of equity, to avoid such conflict of decision, have followed the common law, and decreed forfeitures in the case of land, and have followed the ecclesiastical courts and refused forfeitures in case of legacies, except where there was an express gift over. . . . If it be true that the rule anciently rested for its support upon the doctrine of public policy, we find, even in England, where the rule prevails, that such support has been withdrawn. If it rests, as it seems to have rested in England, upon the desire of the chancery court to conform to the decisions of the ecclesiastical court, such a reason does not in this state obtain.

Ohio, Tennessee, New Jersey and Alabama have likewise denied the exception.

However, according to the introductory part of the note 68 L. R. A. 451:

> So many dicta affirm the exception, and so many decisions have proceeded upon the assumption of its existence . . . that decisions repudiating it may be regarded as contrary to the weight of opinion if not of authority.

In conclusion, this note states:

> In this state of the authorities the future of the exception is a matter of much speculation. As is said in the authorities which have repudiated it, there is no reasonable ground for a distinction between a gift of realty and a gift of personalty. . . . And yet it is not likely an exception fairly established, which prevents the operation of a forfeiture, will be readily abandoned.

Since this note (1904) the authorities have not thrown much light on the present tendency. California has come out unconditionally opposed to the exception. New York has reversed its previous stand against the exception, and now not only recognizes the exception but holds that a gift over to the residue is not a sufficient gift over.

The gift over exception as applied to legacies, although largely historical rather than reasonable, is quite valuable in furnishing the courts with an excuse for not enforcing the forfeiture when, under the facts before it, its enforcement would be undesirable and inequitable. What stand a court will take when it has no precedent to guide it in its own state, will, no doubt, be influenced by the peculiar facts presented in the first case. A careful analysis of the cases will show that the equities involved in the facts in the first case before each court have had more weight than the academic abstract logic as to the reasonableness of the theoretical distinction between realty and personality in applying the "gift over" exception.

Where reasonable ground for contesting the will appeared, the English cases early refused to enforce the forfeiture provision.

The earliest English case in which this exception appears is Powell vs. Morgan, 2 Vern. 90. The court held:

> There was probabilis causa litigandi, and it was not a forfeiture of the legacy.

It was applied again in Morris vs. Burrows, 1 Atk. 399, where the court states that no forfeiture can be incurred "by contesting any disputable matter in a court of justice."

Perhaps the strongest exponent in favor of the exception to the operation of the condition on the ground of probable cause of contest, is In re Friend, Pa. (1904) (209 Pa. 442, 58 Atl. 853.)

The testatrix's will provided:

> If any of my children or grandchildren . . . shall contest the validity of this, my will, . . . he . . . shall be deprived of any beneficial interest under this will and of any share of my estate.

The will then provided a gift over in case anyone kicked about their share. A son who only got $20,000 accepted the challenge but lost his contest.

The Pennsylvania Supreme Court, however, gave him the $20,000 anyway because they said he had probabilis causa litigandi.

The court said:

> The better rule . . . seems to us to be that the penalty of forfeiture of the gift or devise ought not to be imposed when it clearly appears that the contest . . . was justified under the circumstances, and was not the mere vexatious act of a disappointed child or next of kin. A different rule—an unbending one—that in no case shall an unsuccessful contestant . . . escape the penalty of forfeiture of the interest given him, would sometimes not only work manifest injustice, but accomplish results no rational testator would ever contemplate. This is manifest from a moment's reflection, and is illustrated by . . . the one now before us . . . in which there is an allegation of undue influence which procured the execution of the will. If, as a matter of fact, undue influence is successfully exerted over one about to execute a will, that same influence will have written into it a clause which will make sure its disposition of the . . . testator's property. He who will take advantage of his power to unduly influence another in the execution of a will, will artfully have a care to have inserted in it a clause to shut off all inquiry as to the influence which really made the will; and, if the rule . . . is to be applied with no case excepted from it, those who unscrupulously play upon the feelings of the testator may, with impunity, enjoy the fruits of their iniquity, and laugh in scorn at those whom they have wronged. . . . Those who improperly influence a testator may boast to a child against whom he discriminated, of the power they exercised over him, . . . taunting and goading on such child to a contest; and yet if, in the end, those who invited it, . . . succeed in sustaining the will by retracting . . . what they said, the contestant will not only be deprived of his gift or devise, but those who drew him into the contest may acquire his portion as part of their own plunder. . . . No testator, if he could speak from his grave, would declare such to have been his intention when he wrote his will and tried to protect it from assault. . . . To exclude all contests of the probate on reasonable ground that the testator was insane or unduly influenced when he made it, is to intrench fraud and coercion more securely.

On the other hand we find views as far removed from this Pennsylvania court as California is from the Atlantic seaboard.

In re Miller's Estate, Cal., 1909, (156 Cal. 119, 103 Pac. 842) one Miller, then deceased, had willed $1,500, to his wife, and all the rest of his estate to some young girl he had adopted. He put in a proviso that if his wife complained the $1,500.00 was also to go to the girl. Of course the wife contested, upon the ground of undue influence. While the trial court found the wife had probable cause, the will was admitted and the wife lost her $1,500.00.

In upholding the forfeiture, the California Supreme Court said:

> Appellant's . . . contention is . . . that she had probable ground for contest. . . . No such exception is contained in the will, and we know of no principle that authorizes us to declare it. To do so would be to substitute our own views for a clearly expressed intent of the testator to the contrary. . . . Like the doctrine accepted in many decisions to the effect that no forfeiture of the legacy results . . . when there is no gift over . . . it is a mere attempt at an artificial distinction to avoid the force of a plain and unambiguous condition against contests. . . . The forfeiture provision is not against public policy, it must be enforced as written.

The United States Supreme Court, and especially the case of Smithsonian Institution vs. Meech, 1898, (42 L. ed. 793), has been cited and followed as authority by both the champions and the opponents of this exception. We have already quoted language from this case stating will contests too frequently bring to light matters of private life which the public ought not know. The testator had devoted his life to work along scientific lines, had planned for many years to leave his property to the Smithsonian Institution, he died without wife or children and contestants were distant and collateral relatives with little equity in the money testator had earned by his scientific work. Judge Brewer apparently had little sympathy with the contestants and upheld the forfeiture.

The only language in the opinion on this point is a quotation from Roper on Legacies. This seems to be obiter dictum to the case but approved of by Judge Brewer. Roper apparently would recognize the probable cause exception where the will made the devise or bequest and then provided a forfeiture in case of contest, the forfeiture provision being a condition subsequent. But if the will is so worded as to make acquiescence to the will by the legatee a condition *precedent* to the bequest, the probable

cause exception is not applicable because the provision against contest is not a forfeiture provision but a conditional limitation on making of the devise or bequest in the first instance. This distinction should be carefully considered in drafting such a will for a client.

Joseph Warren, of Harvard, in "The Progress of the Law" 33 Harvard L. Rev. 569 (Feb., 1920), states:

> We are reminded in In re Shirley's Estate (Cal., 1910), that the modern tendency is to uphold a condition in a devise that the beneficiary, if he contests the will, shall lose the gift. That case reaffirms the California view, which enforces without reservation such a provision. In Pennsylvania such a condition is enforced if the contest is without reasonable foundation, but otherwise not. Pennsylvania reaches a highly desirable result, but it is difficult to see how a condition broadly framed, as is usual, to cover any sort of contest, can be divided by the court when the testator has not split it. We are left to chose, then, between supporting a provision preventing all litigation by the beneficiaries, or rejecting it entirely. The modern view seems to be that the chance for abuse of the process of the courts in will contests outweighs the disappointment of honest litigation.

As far as Prof. Warren has committed himself, his academic horror of a court "splitting" such a "broad condition" seems to outweigh the "highly desirable results" which he admits Pennsylvania reaches. As to the present tendency of our forty-nine courts of last resort, we cannot find any evidence that Prof. Warren has correctly taken the pulse of the blind goddess.

A number of English cases, and Pennsylvania, New York, Tennessee, South Carolina, and North Carolina hold that when probable cause exists the condition is inoperative, admittedly getting a highly desirable result in all cases.

California, New Jersey, Ohio, and Iowa with a split court, deny this exception.

The United States Supreme Court is cited and followed by both sides of the controversy.

Since Prof. Warren's views the courts pro and con have reaffirmed their previous stands and the only new states found throwing their hats into the ring are Tennessee and North Carolina. Tate v. Camp, Tenn., 1922, (245 S. W. 839, 26 A. L. R. 755) gives an excellent review of the authorities on both sides, and applies the exception, saying: "The reasoning of these . . . cases announces a more equitable and just rule." In Whitehurst v. Gotwalt, N. Car. 1925, (127 S. E. 582) the court said (by dictum): "It is further held, where there exists . . . a probable or plausible ground for the litigation . . . a contest does not work a forfeiture." Citing the U. S. Sup. Ct. case of Smithsonian Inst. v. Meech.

Of course in those states recognizing this exception there is the usual problem of defining what amounts to probalilis causa litigandi.

It will be remembered that In re Friend (1904) 58 Atl. 853, Pennsylvania refused to enforce the forfeiture because the unsuccessful contestant had probable cause. Among other things the testimony contestant relied upon was (58 Atl. 856):

> One of her granddaughters testified that in these latter days she would tell "the same stories over and over again."

The other side of this proposition is very ably handled by the Missouri Supreme Court in a case with the suggestive title of Story vs. Story, 1905 (188 Mo. 110, 86 S. W. 225). According to the court:

> The vicissitudes of his (the testator's) married life had been none the less dramatic because of his humble station; for he gave hostages to fortune by three marriages, had issue by each and, betimes, was sorely pinched by the shoe of matrimonial infelicity.

His third wife divorced for abandoning him and the children of one or the other of the three marriages successfully contested the will in the lower court on ground of mental incapacity. In addition to proving that the eighty year old testator occasionally appeared "with his pants on wrong side before," there was evidence that he told the same stories over and over again.

In reversing the lower court with directions to admit the will, Judge Lamm said:

> It would be a startling infringement on the innocent gaiety of mankind to determine judicially that reconteurs (of any degree) must repeat their favorite stories only under the impending danger of being finally adjudged not only guilty of intellectual staleness, but of actual imbecility and consequent testamentary incapacity.

It has also been decided that advice of counsel to a disappointed legatee that he can win the contest is not probabilis causa litigandi. This holding has the ear marks of a dirty dig at our ancient and honored profession.

Another exception which some courts have recognized is where contestant is an infant. We will review this very briefly.

The exception was recognized in Bryant vs. Thompson, N. Y. Sup. Ct. 1891 (14 N. Y. S. 28), where the court said:

> Any provision in a will, which, in its application, comes in conflict with the organic or statutory law of the state, by which it is made the duty of the courts to look after the rights of infants . . . must be deemed to be illegal and void, as being against public policy. A testator cannot be permitted thus to obstruct, by any clause in his will, the necessary steps prescribed by law for the conduct of judicial proceedings in the case of infants, where the paramount duty of the court is to act in behalf of its wards, and for their best interests: No penalty or forfeiture can be worked against such a party who has done nothing more than to submit his rights to the adjudication of the courts.

On the other hand, Kentucky would hold an infant bound by the forfeiture clause.

In Moorman vs. Louisville Trust Co., Ky. 1918, (203 S. W. 856), the court said:

> It is . . . most necessary and in accord with public policy that an infant shall thus be bound. . . . The very purpose of an action by a next friend . . . is to test the infant's rights and to have them conclusively determined as to every person, adult, and infant alike, who is a party to the action. . . . It has always been the policy of the law to exempt infants from responsibility for their own acts, . . . but it would certainly present an anomaly to exempt them from responsibility also for the acts of those legally constituted to act for them.

In an extension of the above opinion, the court stated the acceptance of provisions of a will by an infant during infancy for support would not preclude a contest after becoming of age.

The New York rule is the soundest. For, under the Kentucky rule the estate could be dissipated before the infant reached maturity and made his election.

Where the forfeiture provision extends to parties other than contestant, the cases are few in number. New York has recognized this exception in In re Vandervort's Estate, 1892, (17 N. Y. S. 316), although both grandchildren were infants.

In conclusion, there is sufficient weight of authority to be safe in saying that, as a general rule, such a forfeiture provision is not against pub-

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JUSTICE FOR THE POOR

Members of the American Bar Association will recall the symposium on Legal Aid at the St. Louis Meeting, in which Hon. Charles Evans Hughes, Reginald Heber Smith, author of "Justice and the Poor," and others took part. That event helped to mark the full recognition by the association of its duty to employ its best efforts to solve the problem of assuring the poor man that equality before the law to which he is entitled in all cases. It was also a recognition of the solid foundation of theory and experience which had been provided by workers in behalf of Legal Aid since the first Legal Aid organization came into existence in New York in 1876, as a means of assisting German immigrants, who were frequently the victims of frauds and impositions.

The story of the growth of a fruitful idea—of the services of public-spirited lawyers and laymen who made it possible, of the various forms which legal aid took from the point of view of organization, of the achievements of the various agencies—is set forth in a style as fascinating as it is authoritative in a bulletin of one hundred and fifty pages issued by the Bureau of Labor Statistics of the United States Department of Commerce. The book is the work of Reginald Heber Smith of the Boston Bar and John S. Bradway of the Philadelphia Bar, and its significance is further attested by the fact that it carries a preface by Chief Justice Taft.

Starting with a narrow proprietary type of organization, the movement for legal aid resulted in the evolution of diverse forms, from which four standard types have appeared, and the chapter in the book devoted to these is highly instructive. There is, first, the bar association type, as illustrated by the very effective bureau of the Association of the Bar of Detroit. Then there is the bureau conducted as a department of a general charity organization, as in Chicago. Third, there is the incorporated private charitable organization, which is the type prevailing in most of the larger cities. Fourth, there is the public bureau type, which is generally organized as a department of the Municipal government. All of these have done, and are doing, excellent work, thus showing that each is in harmony with local conditions and thus provides the most effective expression for the legal aid idea in the particular locality. But though these diversities will probably exist for a long time, the opinion of the authors is that the public bureau is the type which will ultimately prevail.

This is also the view of Chief Justice Taft. "Such societies have increased in various parts of the country," he says in the preface, "and differ some in their organization, in the sources of their maintenance, whether by the bar, or by social aid societies, or by municipalities. The success of them and the real good that they have done are a testimony to the high spirit of many lawyers and reflect credit on the bar. Without expressing a final conclusion on the subject it seems to me that ultimately these instrumentalities will have to be made a part of the administration of justice and paid for out of the public funds. I think that we shall have to come, and ought to come, to the creation in every criminal court of the office of public defender, and that he should be paid out of the treasury of the county or the State. I think, too, that there should be a department in every large city, and probably in the State, which shall be sufficiently equipped to offer legal advice and legal service in suits and defenses in all civil cases, but especially in small claims courts, in courts of domestic relations and in other forums of the plain people."

The direct responsibility of the bar is particularly emphasized by the authors. By virtue of their oaths, lawyers have always been under a certain obligation to aid the helpless and the poor to get justice. The difficulty has been to find how to discharge this obligation effectively, particularly under the changed and changing social conditions resulting from our great immigration and our increasing urbanization. The solution is furnished by the organized bar and its support of legal aid as an essential part of its program. The individual lawyer can do

little. The authors point out in this connection that the duty of the bar differs under different conditions. In cities where a legal aid organization is needed and none exists, the bar should take the lead in its establishment. In cities where legal aid bureaus and public defenders already exist, the bar's obligation is to support them with their contributions and, in case of municipal bureaus, to stand against the invasion of political influence. In the smaller cities, where the population is 25,000 or less, the bar should do the work itself, and in such cases the plan of the Illinois Bar Association is particularly commended. Finally, "the bar must be relied upon to take the leading part in shaping and guiding the future developments in this general field along sound and constructive lines."

Since the discussion at the St. Louis meeting of the American Bar Association, and the appointment of a Legal Aid Committee, the organized Bar of the country has taken up the work with growing enthusiasm. A number of State organizations have created legal aid committees, and the list of cities in which the local associations have done the same is long and is constantly increasing. The bar is thus awake to its responsibilities and may be relied on to find more and more effective means of discharging them. That part of the history of the profession of which the public never hears deals with the uncompensated aid which members have from time immemorial rendered in discharge of their obligations as lawyers. It has been said that the first legal aid institution in America came when the first law office was opened. Conditions now require a change of methods to a large extent, but the professional spirit which insures the lawyer's cooperation and support of the legal aid movement is still the same.

But the Bulletin of the Department of Labor is not the only recent worth-while contribution to the subject. Of great value is the symposium on Legal Aid Work contained in the March number of "The Annals" of the American Academy of Political and Social Science, published in Philadelphia. This issue furnishes an analysis and discussion of the various agencies developed in the United States for the purpose of securing legal justice to poor persons, and there is also a Foreword by Chief Justice Taft. The symposium is the first that has ever been printed on the subject. It is composed of contributions from more than twenty-five men and women, most of whom "have been and still are members of the legal aid forces on active duty at the front lines. What they have written is not the product of theoretical deduction but is the result of actual contact with thousands of poor persons presenting actual cases calling for justice in the courts." The editors in charge of the volume are John S. Bradway, Secretary of the National Association of Legal Aid organizations, and Reginald Heber Smith, who is chairman of the Legal Aid Committee of the American Bar Association.

In the limited space here available it is almost impossible to discuss adequately even a single phase of this important movement. It is therefore a satisfaction to be able to point the reader to two authoritative publications in which practically all phases are discussed by those in a position to speak with authority.

COMPARATIVE LAW BUREAU CONTRIBUTIONS

In accordance with custom a considerable part of the April issue of the Journal is devoted to the contributions of the Bureau of Comparative Law. These give an interesting survey of legislative activities in other countries, particularly in Latin-America. And they once more call attenution to the similarity in the problems with which all countries have to deal.

Of particular interest to Americans are the laws relating to finance which Chile has passed, in accordance with the advice of a commission of American experts. This legislation is said to mark a notable advance for Chile. It will be recalled that Colombia some time since also invoked the aid of an American commission in dealing with this complicated problem. Mexico's new oil law, passed under authority of Article 27 of the New Constitution, and confirming the national ownership and dominion over certain subsoil substances, is of sufficient importance to keep our State Department continuously active. Costa Rica's law barring Coolie labor perhaps indicates the beginning of a new Latin-American attitude towards Asiatics, while Venezuela's new constitution registers a distinct move towards greater centralization, though the federal principle is retained.

Apropos of the forthcoming Bar Conference at Washington, it is interesting to note that Argentina has appropriated $15,000 to pay the expenses of a conference of Bar Associations to consider uniform civil procedure and judiciary acts.

ORGANIZATION AND WORK OF BUREAU

CONTRIBUTIONS OF THE COMPARATIVE LAW BUREAU OF THE AMERICAN BAR ASSOCIATION

THE objects of the Bureau include the translation into English of foreign laws, the preparation of bibliographies in its special field, and the consideration of foreign legislation and jurisprudence with a view to present information and materials of value to lawyers, law teachers and law students.

All members of the American Bar Association and of the Comparative Law Bureau will receive the JOURNAL issued by the American Bar Association.

All members of the Association are by that fact also members of the Bureau. Any state bar association can become a member on payment of $15 annually, and will then be entitled to send three delegates to the annual meeting of the Bureau and to receive five copies of the AMERICAN BAR ASSOCIATION JOURNAL. Any county, city, district, or colonial bar association, law school, law library, institution of learning or department thereof, or other organized body of a kind not above described, may become a member on payment of $6 annually, and will then be entitled to send two delegates to the annual meeting of the Bureau and receive two copies of the JOURNAL. Any person eligible to the American Bar Association, but not a member of it, can become a member of the Bureau on payment of $3 annually and will then receive the JOURNAL.

Distinguished foreign jurists, legislators, or scholars may be elected honorary members. They pay no fees.

The authorship of the contributions of the Bureau to the JOURNAL is indicated in each case by the initials of the writer.

The next meeting of the Bureau will be held at Denver, Colo.

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Civil Code of Argentina, by Joannini.
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The Seven Parts (Las Siete Partidas), by Scott, of this Editorial Staff; in preparation by this Bureau.

Foreign Codes and Laws Translated Into English—Now Purchasable

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German Civil Code, by Chung Hui Wang.
German Civil Code, by Loewy, under the direction and annotated by a joint committee of the Pennsylvania Bar Association and the University of Pennsylvania.
Penal Code of Siam, by Tokichi Masao (18 Yale Law Journal, 85).
Laws of Mexico, by Wheless, of this Editorial Staff.
Mining Law of Mexico, by Kerr, late of this Editorial Staff.
Mining Laws of Colombia, by Eder, of this Editorial Staff.
Commercial Laws of the World, Am. Ed., Boston Book Co.
German Prize Code, as in force July 1, 1915; translated by C. H. Huberich and Richard King (Baker, Voorhis & Co., N. Y.).

AN INTER-AMERICAN NEGOTIABLE INSTRUMENTS LAW*

By Hon. Charles Sumner Lobingier

THE term "commercial law" is not a scientific one and at best is no more than a loose description of several distinct branches. But one of them, which is everywhere recognized as "commercial," is what is known in the Anglo-American law as negotiable instruments. Throughout the western hemisphere that subject has now been codified and the way opened for an approach to uniformity.

Broadly speaking, these codifications divide, as do all other branches of law in this hemisphere, into no more than two groups—Civil and Anglo-American. Fundamentally, they are not widely separated. Some features of both hark back to the Roman law, but more of them derive from the customs and practices of mediæval (especially Mediterranean) traders.[1]

Civil Law

In Civil law countries, negotiable instruments and other commercial subjects are treated mainly in Codes of Commerce, although the Civil Codes likewise contain considerable material thereon. South of the Rio Grande, these Codes of Commerce have, until recently, been entirely of Civil law origin. But they are far from uniform.[2] Many find their source directly or indirectly in the French Code of Commerce of 1807-8, upon which the Spanish Code of Commerce of 1829 was based.

The earliest Latin-American Code, including bills of exchange, was the Brazilian, appearing in 1850.[3] The present Spanish Code of Commerce was promulgated in 1885, somewhat more than one hundred of its articles[4] being devoted to Negotiable Instruments. It was extended to the Spanish colonies in 1886, but has been superseded in Panama and the Philippines, which retain the Spanish Civil Code, by the Uniform Negotiable Instruments Law discussed hereafter.

Cuba is unique as being the only country, outside of Spain itself, where the Spanish law, in the private and commercial field, prevails in toto. Most of the other Spanish American states separated from the mother country before the first of her modern codes was promulgated and, while following, like her, the French models, produced instruments differing considerably from hers.[5] Porto Rico, though once in the same situation as Cuba, has effected important changes in the Spanish law. The Civil Code has been thoroughly revised and amended,[6] a corporation law was enacted[7] and, last but not least (for it has a vital bearing on the enforcement of commercial law), a new and simplified code of procedure was adopted.[8] Similar results have been achieved in the Philippines. For, although the Civil Code there has never been revised, it has been considerably amended, both expressly and by implication, while entire titles of the Code of Commerce have been displaced by comprehensive statutes like the Corporation Law,[9] the Negotiable Instruments Law,[10] and many others; and the Code of Civil Procedure,[11] adopted in 1901, has made possible the much more expeditious enforcement of commercial rights. In Cuba, however, the commercial law remains practically as it was when Spain withdrew.

Cuba's Strategic Position

Geographically, the island of Cuba lies midway between the respective western hemisphere domains of the Civil and the Common law. Jurisdictionally, as we have just seen, it belongs to the former; but commercially it is much more closely linked up with the latter's field.

Out of a total of $290,372,702 worth of imports into Cuba in 1924, the amount furnished by the United States was $192,115,060; by Spain, $14,521,013. Of the $434,865,295 worth of exports from Cuba, those received by the United States amounted in value to $362,264,908. In other words, the United States furnished 66.1% of Cuban imports, and took 83.3% of Cuban exports.[12] Added to this is the stupendous fact that more than a billion and a half of American dollars have been invested in Cuba.

Such being the actual conditions, there is obviously no inherent reason why Spanish law as such should continue to govern exclusively Cuba's international trade. Recognizing the priority of that law in general and the presumption in its favor from long continuance, we may still legitimately inquire whether, on its commercial side, it is adequate for the new and extraordinary economic conditions indicated by these figures. And such an inquiry will disclose a feeling, prevalent and profound, among business men, bankers and lawyers of diverse nationalities in Cuba, that the strain upon her legal machinery occasioned by this vast expansion of her international trade has revealed serious defects in the local laws, which must be remedied if her commerce is to continue its phenomenal growth or even to hold its own.

Movements Toward Reform

That the Cuban officials, also, are not unmindful of this feeling, is apparent from a decree issued by the President of the Republic, which, on account of its importance, is here translated:

"Whereas, a need coeval with the foundation of the Republic and so far not provided for even in a minimum degree, is that of an adequate codification of law, so that,

*Read before the Comparative Law Society of Washington, D. C., March 30, 1926.

Judge Lobingier has recently returned from an official visit to Cuba in connection with a survey of the Cuban laws and the materials for this address are one result of his investigations there.—*Editor.*

1. See Mitchell, the Law Merchant, (Cambridge, 1904), 161; Jenks, The Early History of Negotiable Instruments, Select Essays in Anglo-American Legal History, III, 51.

2. P. J. Eder, Uniformity of Laws of Bills of Exchange, (Washington, 1916).

3. Id. 4.

4. Code of Commerce, Arts. 443 et seq.

5. See my article "Modern Civil Law," Corpus Juris, XL.

6. See Report of the Commission to Revise and Compile the Laws of Porto Rico (Washington, 1901).

7. Act No. 30, 1911, Compilation of Laws, Arts. 407 et seq.

8. Mch. 10, 1904, Compilation of Law, Arts. 4985 et seq.

9. Act. 1459.

10. Act 2031.

11. Act 190.

12. Secretaria de Hacienda, Seccion de Estadistica (1924). The figures are those of the U. S. Trade Commissioner at Havana as reported to the U. S. Department of Commerce.

while preserving the sound portion of our characteristic judicial institutions, we shall at the same time implant such innovations as may be demanded by radical changes operated in political and economic conditions of Cuba, and by contemporaneous scientific progress; and

"WHEREAS, the sporadic, fragmentary and heterogeneous reforms which from time to time and as a result of special exigencies of the new regime, have been introduced in the legislation inherited from the old sovereignty as well as some organic laws promulgated by virtue of peremptory precepts of the Constitution, augment to a maximum degree the necessity for new codes and laws which shall continue the new standards of law already in force and those which it may be convenient to promulgate in order to make the old laws more complete; and

"WHEREAS, the Decree No. 13 of January 6, 1908, together with reforms of the Penal Code and the splendid initiative of the Bar Association of Havana in summoning a National Juristic Congress in 1916 to advise bases for a new Cuban Civil Code, the appointment by the said Congress of a Commission composed of five of our most prominent jurisconsults to prepare the said Code, and subsequently the establishment of the National Codification Commission by law of March 9, 1922, which superseded the former, have responded to a certain extent to these requirements; and

"WHEREAS, the said Commission, not only because of the very large number of its members out of all proportion to the nautre of this work and converting it rather into a popular assembly than a thoroughly technical and select body of law-makers, but also by reason of the gratuitous character of services rendered, has not produced any results up to the present time; and

"WHEREAS, in view of these negative results, it is necessary that, without violating the law, the Executive should provide the most efficient measures for the conscientious and active realization of these patriotic endeavors, employing such powers as are conferred upon him and making use in the proper form of the credit set forth in the current Budget for that very purpose; and

"WHEREAS, nothing appears more advisable, in harmony with said purpose, than the reorganization of the said Commission, setting forth certain regulative provisions which shall render its operation much more possible by reduction to a smaller number of attorneys of recognized competency and unquestioned aptness for this class of work; and inasmuch as it is not reasonable that the work to be carried out and which signifies an absolute devotion of time to the matter should be placed on the shoulders of this Commission, it is obvious that the practical plan is to establish a technical office which shall collaborate with the Commission, presenting to it suggestions for its deliberations in connection with the various projects to be prepared, systematizing these endeavors, providing orderly calculations of matters, and performing such other services as may be necessary;

"THEREFORE, in the exercise of the powers granted to me by the Constitution and the law, and on the recommendation of the Secretary of justice,

"IT IS RESOLVED

"First—to reorganize the National Codification Commission, to be composed of the following gentlemen: (thirteen members named).

"Seventh—there shall be created in the Department of Justice the office of Legislative Program, which shall be presided over by a Director who must necessarily be an attorney of recognized reputation as jurisconsult and who shall be paid (salary specified).

"Eighth—the duty of said office shall be to prepare legislative programs to be submitted to the examination and resolution of the various sub-commissions or the Commission as a whole, according to the character of same to correct the style of program approved and to direct its printing and publication."[12]

The Commission thus created and appointed began to function and under date of August 20, 1925, the Secretary of that branch, which is considering "mercantile legislation," sent out a circular inviting suggestions and recommendations regarding proposed changes.

Here then is an opportunity for weighing the merits of the two systems of commercial law now in vogue in this hemisphere and of adopting the one which is best fitted for the needs of international trade. And if the Cubans at this juncture adopt a negotiable instruments law which meets those needs, it will afford an impressive object lesson for the nations farther south and might open the way for legal uniformity in that subject throughout the hemisphere.

12. Decree 1608, July 27, 1925.

Anglo-American Law

North of the Rio Grande, commercial law is mainly Anglo-American.[14] It came into England as an exotic system—the "law merchant"—which had to make its way slowly and against great opposition owing to provincialism and local prejudice. Fashioned, on its practical side, and ultimately absorbed, by a nation of traders, and moulded in its legal aspects by eminent judges, notably Lord Mansfield, "the father of modern mercantile law," [15] who formulated its details with singular attention to the needs of commerce, the perfected "law merchant" became ready for codification far in advance of most other branches of Anglo-American law.

Codification

The earliest codification of the Anglo-American law of Negotiable Instruments was that of California, enacted in 1872,[16] which was later adopted in North Dakota, Utah and Wyoming.[17] All of these enactments have since been superseded by the Uniform Negotiable Law, presently to be noticed.

Meanwhile, some of the ablest legal minds in England, foremost among them being Judge M. D. Chalmers, were working on such a code. Their labors bore fruit in the "Bills of Exchange Act,[18] passed by the British Parliament in 1882, ten years after the California experiment, and pronounced "an unqualified success." [19] For it not only covered the whole subject of Negotiable Instruments; it embodied the results of centuries of English juridical and commercial evolution. As was well said by Sir George Buchanan,

> "It is not an arbitrary law imposed by the legislature on the commercial community; the legislature has but given the sanction of law to the usages of our commerce and industry."[20]

This epochal and comprehensive piece of legislation was substantially reenacted for Canada in 1890 (revised 1906),[21] paved the way for the American Uniform Negotiable Instruments Law, and was the basis of the measure[22] adopted for Costa Rica in 1902.

In the United States, the movement was facilitated by the organization of the National Commissioners on Uniform Laws, who held their first conference at Saratoga Springs, N. Y., in August, 1892.[23] At the conference of three years later a committee was appointed to codify the law of Negotiable Instruments. In the following year, 1896, a draft based on the British Act, was reported, and ultimately approved by

14. The principal exception is Quebec.
15. Scrutton.. Influence of Roman Law on the Law of England (Cambridge, 1885) 179-183. See also Cranch, Promissory notes, Before and After Lord Holt, Select Essays in Anglo-American Legal History, III, 72.
16. Corpus Juris, VIII, 45 (9).
17. Id.
18. 45 & 46 Vict. c. 61.
19. Maclaren, Bills, Notes and Checks, 3.
20. U. S. Senate, Doc. 768.
21. Rev. Stats. (1906) Ch. 119.
22. *Ley de Cambio*, Nov. 25, 1902.
23. American Bar Association Rep. XLVII, 699.

the conference and recommended to the state legislatures for enactment. Beginning with 1897, the states, one after another, have adopted it, so that now it is in force in every American state, in the District of Columbia (by Congressional enactment) and in the Pacific territories—fifty-two jurisdictions in all. It is thus the most widely diffused piece of American state legislation. Not only so, but other countries in the western hemisphere have adopted it, notably Colombia, Panama and San Domingo.

Comparison of the Two Systems

I. Differences in Form

As indicated above, the differences between the Spanish and Anglo-American systems are not fundamental. They are mainly formal and involve matters of detail; but it is precisely such matters which provide the traps and pitfalls for the litigant. They are practical differences such as might naturally be looked for as between a hardheaded, commercial people, like the so-called Anglo-Saxons, and those of a less materialistic and more formalistic temperament like the Spaniards.

But, as well asked by Mr. George J. Eder, the brilliant young investigator of the Interamerican High Commission,

> " . . . is it altogether true that by a rigid aherence to immutable forms, with corollary provisions for invalidity in case of variance, the greatest protection is afforded to the ignorant masses? Is it not rather the case that in a code which declares null and void any contracted provisions departing in the slightest detail from the letter of the law, the perspicacious swindler can find a loophole to escape the due fulfillment of his contract, and that thus the formal and inflexible code is but a snare for the innocent and a pitfall for the unwary? Was it not of such a law that the words of the Apostle were spoken[24] 'And the strength of Sin is the Law'? It is rather in the tenets of the English common law and in the untrammeled decisions of impartial judges that true justice may be found, alike for the wise and for the ignorant. To all who are mentally and otherwise capacitated to contract, the fullest liberty compatible with the prerogatives and liberties of others is granted."

1. *Formal Requisites.*. True to its origin the Spanish Code of Commerce lays much greater stress upon the form of the instrument than does the Uniform Negotiable Instruments Law. Almost at the outset of the former's title devoted to the subject it prescribes eight items which a bill of exchange *(letra de cambio)* must contain, to be effective in litigation, the first two being the dates of issue and of maturity. A subsequent article provides that the instrument shall be deemed a *pagare* (prommisory note) in favor of the holder and against the drawer "if it contain any defect or lack legal formality." [25] In striking contrast is the provision[26] of the Uniform Negotiable Instruments Law that "the validity and negotiability" of the instrument are not affected by such defects.

Among the eight formal requisites of the Spanish bill of exchange is a recital of

> "The form in which the drawer is declared reimbursed by the holder whether by receipt of its value in cash, merchandise or otherwise, to be expressed by the phrase 'value received'; or, if accepted on account of other pending operations, 'value on account' or 'value understood'." [27]

Under the next following article, the two latter phrases render the acceptor liable to the drawer for the amount of the bill in order to demand it or compensate him in the manner and at the time which both may have agreed upon in making the contract.[28]

> "There is probably no article of the Code of Commerce," declares Dr. A. W. Kent of the Havana Bar, a practitioner of many years' experience in the Cuban courts,[29] "which has given rise to a larger number of differences of opinion than this fifth section of Article No. 444. No two decisions are alike on this point and I have not yet seen a clear definition of the meaning which the legislator intended to give to the phrases 'value on account' or 'value understood'.
>
> "Huguet states 'that in the case of the merchant in Madrid drawing on the merchant of Barcelona, to pay to a third person to whom the Madrid merchant owes money, the phrase 'value on account' should be used to indicate that the sum represented by the draft will be paid by the Barcelona drawee, deducting same from the funds owned by the Barcelona drawee to the Madrid drawer, and deducting same from the funds in his possession; and that the phrase 'value understood' is employed when there is no delivery of money or merchandise between the drawee and the taker, or payee, nor any equivalent operation, nor any liquidation pending, nor, as a matter of fact, any transaction between them; that by virtue of the clause 'value understood' it is considered that the taker or payee becomes responsible for the payment of the money to the drawer and that this is based on the supposition that the phrase 'value understood' presupposes that there existed a prior contract between drawer and payee with regard to the time of reimbursement to the drawer.
>
> "I have spoken personally with one even dozen Havana bankers, asking them if they could explain to me off hand the forms of bills of exchange and their reasons for specifying different considerations in such bills of exchange or drafts, according to the nature of the transaction. By this, I meant the phrases 'value received', 'value understood', 'value on account' or 'value retained by drawer' and in each case the banker advised me that it would be necessary to consult his attorney before replying as he did not understand the legal meaning or scope of these various phrases."

One is here reminded of Sir Henry Maine's illustrations of the rigid formalism of early law,

> "'If,' says Gaius, 'you sued by Legis Actio for injury to your vines, and called them vines, you would fail; you must call them trees, because the text of the Twelve Tables spoke only by trees.' The ancient collection of Teutonic legal formulas, known as the Malberg Gloss, contains provisions of precisely the same character. If you sue for a bull, you will miscarry if you describe him as a bull; you must give him his ancient juridical designation of 'leader of the herd.' You must call the forefinger the 'arrow' finger, the goat the 'browser upon leeks'. There are lawyers alive who can recollect when the English system of Special Pleading, now just expiring, was applied upon principles not remotely akin to these and historically descended from them." [29a]

2. *The indorsement* of a bill of exchange in Spanish law requires formalities almost equal to those necessary for original execution,[30] including the recital of consideration. Dating the indorsement is deemed so important that its omission prevents the title from passing[31] "and the endorsee is regarded in the light of a collection agent." [32]

3. *Protest.* This process involves even more formalities than are prescribed for the original execution of the bill.[33] It must be made "before sunset on the day following default" [34] before a notary public,[35] served on the drawer at the place of payment,[36] and include "an exact copy of the draft," its acceptance and indorsements,[37] the demand for payment[38] and the

24. I. Corinthians, XV.
25. Spanish Code of Commerce, Art. 450.
26. Art. 6.
27. Spanish Code of Commerce, Art. 444 (5).
28. Id. Art. 445.
29. American Chamber of Commerce Bulletin, IV, No. 7, pp. 15, 17.
29a. Early History of Institutions (New York, 1875), 255, 256.
30. Code of Commerce, Art. 462.
31. Id. Art. 463. Int. Bank v. Montagne, 16 Philippine, 667; Warner Barnes & Co. v. Diaz, 10 Philippine, 418. But compare Art. 465.
32. Eder.
33. Code of Commerce, Art. 504. 34. Id. (1). 35. Id. (2). 36. Id. (3). 37. Id. (4). 38. Id. (5).

answer thereto,[39] a warning of liability for damage,[40] the signature of the protestor[41] and the day and hour of making.[42]

> "Any mistake made by the notary in the protest, failure to mention the exact hour of same, any mistake in the copy of the draft, rendered the document absolutely worthless as the basis for a suit."[43]

Naturally these requirements are burdensome.

> "During the Moratorium, banks frequently handed to their notaries as many as fifty drafts per day for protest. It is a physical impossibility to write out a protest in long hand, call on the debtor, make the protest and write out a copy of the protest, call, answer of debtor, etc., etc., in less than one hour. What happened?
>
> "Notaries were calling their friends all over the Island, requesting them as a matter of personal favor to give them, the notaries, permission to make out the protests on the following day and to date same back."[44]

Naturally, too, such requirements are expensive.

> "A protest in the city of Havana costs from six to seven, up to ten or fifteen dollars; a protest in a small town of the interior where there happens to be no notary and to which a notary is obliged to travel from an adjoining town, may cost $100 or more, and that amount has been charged in many, many instances during the time of the panic."[45]
>
> "Anglo-American legislators," observes Mr. Geo. J. Eder,[46] "are disposed to take the view that formal protest of a bill of exchange is an obsolescent practice no longer necessary under modern conditions of trade."

And he quotes elsewhere the remark of Judge Chalmers, author of the "Bills of Exchange Act," to the effect that "the protest is considered a formality interesting to antiquarians, which is complied with to please our oversea friends, rather than as a commercial or juridical necessity."

In the Uniform Negotiable Instruments Law (Arts. 152 et seq.) protest is much simplified and in most cases dispensed with altogether. It is considered necessary in Civil Law countries in order to bring an executory action, but it might be made permissible in such cases without *requiring* it in any.

II. Differences of Substances

But in addition to these formal features, there are certain differences between the Spanish and the Anglo-American law which affect the very nature of the negotiable instrument. Among these are:

1. *The distinction between civil and mercantile instruments.*

To quote again from Mr. Eder:

> "The present Cuban Code differentiates between the liabilities of merchant and non-merchant as parties to promissory notes and drafts, and between these according as they originate in commercial or civil transactions. The distinctions between these, and the interpretations of the corresponding rights and obligations arising therefrom, are exceedingly intricate, and quite incomprehensible to even the most experienced banker or merchant. Under the American law, of course, no inquiry is made into whether the instrument owes its origin to a purchase of pins for office use, which would be a commercial operation, or a purchase of pins for use at home, which would be a civil transaction."

This distinction runs through various phases of the Civil Law. Ordinary transactions are governed by the Civil Code. But the Code of Commerce is for mercantile transactions.[47] Often, however, the line of distinction becomes faint and it is not uncommon for courts of last resort to divide on the question whether a particular transaction is mercantile or civil.[48]

Mr. P. J. Eder in his monograph says that the Spanish Code of Commerce

> "discards the necessity of the parties being merchants in order to give the bill the character of commercial paper."[49]

But that is not the way the Code operate in Cuba. The practitioner already quoted observes:

> "The Supreme Court, by decisions of December 12, 1903, August 5, 1904, May 7, 1907, November 11, 1914, and many others, has held that a proimissory note given, or received, by a person not a merchant, or one issued as a result of a transaction not commercial, shall not be considered a negotiable instrument under the Code of Commerce and therefore may not be utilized as the basis of an execution on promissory notes even in instances in which the note stated on its face that the person obligating himself to the payment thereof, had received the money in a commercial transaction and would use it exclusively in commercial operations; and have allowed defendant to allege and prove that the operation was civil and not commercial."[50]

The Uniform Negotiable Instruments Law knows nothing of this artificial distinction and the adoption of that law would thus remove a fruitful source of uncertainty in business and litigation.

2. *Negotiability.* "Of the innate characteristics of the bill of exchange," writes Mr. George J. Eder, "perhaps the most important is its negotiability, and it is precisely in this connection that the Anglo-American and Latin codes are most at variance. Under the latter, as under the Hague Regulation, the possessor of a bill of exchange is deemed the rightful owner if he can show title thereto by an uninterrupted series of endorsements, even though one or more of them be proved forged or otherwise defective, and he can be compelled to surrender the draft to the rightful owner only if it be established that he obtained it in bad faith or under circumstances showing gross negligence. Under Anglo-American law, similar provisions obtain with regard to instruments to bearer, bank notes, etc.; but a bill drawn to the order of a designated person is transferable solely by endorsement, and inasmuch as a forged or unauthorized signature is deemed wholly inoperative, no title can be conveyed thereby. The currency of a negotiable instrument under this doctrine derives from the fact that each subscriber thereto warrants unconditionally the genuineness and validity of the instrument and of all signatures appearing thereon. It is widely held by legislators in other countries that this guaranty imposes upon the endorser or payer of a draft the impossible obligation of examining and verifying the whole history of every bill of exchange which may be received in the course of business, and that this would be in effect an insuperable obstacle to the free negotiation and currency of such instruments. The fallacy of this argument is apparent. If a bill of exchange be lost or stolen, and the endorsement forged, it is clear that one or two innocent parties must suffer for the guilt of a third, either the person losing the bill or a subsequent holder in good faith and for value.

39. Code of Commerce, Id. (6). 40. Id. (7). 41. Id. (8). 42. Id. (9).
43. A. W. Kent, American Chamber of Commerce Bulletin, IV, No. 7, 21.
44. Id.
45. Id.
46. Comparison of American Legislation on Bills of Exchange, etc. (Washington, 1925), 60.
48. Three differing opinions on this question were expressed in Compañia Agricola v. Reyes, 4 Philippine, 2. See also Banco Español v. Tan Tongco, 13 Philippine, 629.
49. Uniformity of Laws of Bills of Exchange, 7.
50. Dr. A. W. Kent, American Chamber of Commerce Bulletin IV No. 7, p. 15.
47. Code of Commerce, Art. 2.

Now it is obvious that a draft may be lost in the mails or under other circumstances where the owner is powerless to prevent its loss, or it may be stolen and the endorsement forged, or the endorsement may be obtained through duress, and it would seem unjust, and abortive to commerce, to expect the owner to assume liability thereby.

On the other hand, it works no hardship to insist that a person who parts with a valuable consideration in exchange for a draft or note, without fully assuring himself of the responsibility of the person negotiating the instrument, does so at his peril. It is not required that he examine further into the history of the draft, nor that he be familiar with the signature of all prior parties to the instrument; the preceding endorser vouches unqualifiedly for the bill in every respect. A person negotiating a draft for a stranger or person of dubious responsibility is guilty of the grossest negligence, and if the bill or an endorsement thereon be forged, he cannot be considered a holder in due course notwithstanding that he took the bill in good faith, before maturity, and for a valuable consideration. This principle of absolute warranty and liability is logical, equitable and practical. Far from restricting the free circulation of bills of exchange, it provides an incentive for their use. The person drawing or endorsing a draft to the order of a particular person has a positive guaranty that only that person, or someone designated by him, can obtain payment. Accounts may be settled by check in any state of the Union without fear of loss or theft in the mails or otherwise, and a possibility of being forced to make a second disbursement to the rightful creditor. It is *impossible* that any large use be made of the facilities and conveniences offered by drafts, notes, checks and certified checks so long as the legitimate parties to the instrument are afforded no protection by law, and so long as a thief can convey as incontestable a title as could a rightful owner. If Cuba is to have the modern legislation which her high rank in the commercial world so truly merits, this principle of the common law *must* be incorporated into her code."

3. *Effect of Execution.* Is the bill or check an equitable assignment of the drawer's funds which binds the drawee? Or is the drawer entitled to revoke it before payment? The Spanish law answers that

> "the check must be considered as an instrument to bearer, who is not obliged to prove the legality of his title or of its acquisition. The drawer is obliged to guarantee payment of its value, and, consequently, if, after drawing it, he revokes the order of payment to the person to whom he delivered it, he must repay the value thereof to whomsoever may hold it in good faith."[51]

But the Uniform Negotiable Instruments Law, settling a controversy among American jurisdictions, declares:

> "A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same."[52]

In defending this position at the Hague Conference in 1912, Dr. Sichermann, an Hungarian delegate, replying to the Austrian technical delegate, Dr. Hammersclag, said in part:

> "In practice no danger results from the revocation. But . . . let us suppose that the danger really exists. Would the delaying of the effect of the revocation until the time limit for presentment has expired really avert the danger of an abuse or of a crime resulting from the withdrawal of the cover? Not at all, because even if the dishonest drawer had provided sufficient cover when the check was drawn he can withdraw it before the holder can, by means of another check, . . . or by telegraph or telephone. . . Therefore, if the drawer wishes to act dishonestly, the delaying of the effect of the revocation would not safeguard the holder. . . Mr. Hammerschlag declared that in order to make the check popular the holder must be safeguarded as much as possible; granted, but . . . to decide that the revocation shall not be at once effective is a mistake. We would safeguard the holder against an imaginary danger while exposing him to a very real one—because the loss, the theft, etc., of the check occurs every day; therefore the provision recommended by Mr. Hammerschlag decreases the security of the holder on the one hand in a greater measure than it is increased on the other. . . Finally, we are told that there is a contradiction in a provision which grants to the drawer the right to defraud the holder. . . This is a misunderstanding, because our proposition does not grant a right to the drawer; it only gives him permission to make use of the revocation, and this is very different. If the law gave a right to the drawer, then he would not be responsible for having used that right, but when it is a question of a permission, a possibility, then he must show that he made proper use of that power, if thereby he jeopardized a party interested. There are provisions quite similar in the German Civil Code, Art. 790, in the Swiss Code, Art. 470; and nobody considers these provisions as a blow at honesty."[53]

4. *Terms of Payment.* The Uniform Negotiable Instruments Law, in defining the degree of certainty required as to time of payment, permits the sum to be made payable "by stated instalments."[54] This fits in well with the proposed measure providing for conditional sales and would enable the vendee to give such a check, making the instalments to correspond with the sales contract. Such an arrangement would be impossible under the inflexible Code of Commerce.

* * * *

The foregoing will indicate some of the more important advantages which would accrue by the adoption of the Uniform Negotiable Instruments Law.

And it would seem that any successful efforts toward uniformity must follow along the lines of that law. For, not only are the present Codes of Commerce hopelessly in conflict with each other, but the whole tendency of new American legislation is away from those Codes. We have seen how several Spanish-American countries have already adopted the Uniform Negotiable Instruments Law. And it is significant that other Spanish-American countries which have recently changed their commercial law, have not adopted the Spanish Code of Commerce; they have turned rather to "the Uniform Regulation and Convention approved at the Hague in 1912 . . . generally and rightly considered the most complete and perfect embodiment of civil law principles as applied to bills of exchange."[55]

Of course the latter never could displace the Uniform Negotiable Instruments Law, and the hope of uniformity seems to lie in the gradual extension of that most successful achievement in Anglo-American Codification.

51. Walton, Leyes Comerciales y Maritimas de la America Latina, II, 839, translation by Eder, who adds: "This question is left entirely outside the scope of the Hague Regulations in accordance with Art. 14 of the Convention."
52. Art. 127.
53. U. S. Senate Doc. 162 (1913).
54. Sec. 2 (2).
55. George J. Eder.

REFORM IN THE TURKISH JUDICIAL SYSTEM

By Crawford Morrison Bishop

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THE adoption by the Turkish Government of the Swiss Civil Code in place of the former civil code (Medjelle), which has been recently announced, constitutes an important forward step in the reform of the Turkish system of jurisprudence.

The former code was based on principles of the Mohammedan Koranic law and included the subject of family law or the law of domestic relations. It was at first attempted to reform or modernize this code, but this attempt was abandoned. The Legislative Commission has been engaged for some time in the translating and editing of the new code for submission to the National Assembly at Angora.

The Swiss Civil Code, enacted on December 10, 1907, is the latest codification of civil law in Europe. An English translation by Robert P. Shick, Esq., was published by the Comparative Law Bureau in 1915. Another English translation by Ivy Williams has recently been published by the Oxford University Press. The Code was framed in French, German and Italian, and was the result of careful compilation and revision, extending from 1892 to 1907. The fact that, besides being the most modern code in Europe, it had been successfully applied in the Swiss courts in cases involving Swiss nationals of French, German and Italian race, undoubtedly influenced the Turkish Minister of Justice in favoring its adoption. The latter official, moreover, had himself received his legal education in Switzerland, and so was familiar with the practical working of that code. The fact that the Code was drawn up in the French language, with which Turkish officials are familiar, also made it more accessible and acceptable to them.

The Swiss Civil Code is divided into four major sections, comprising: (1) the law of persons; (2) the law of domestic relations, or family law; (3) the law of inheritance, and (4) the law of property. Under the first section is embraced the law applicable both to natural persons and to corporate entities. The second includes the subjects of marriage and divorce, the matrimonial property law, the law of parent and child, guardian and ward, family property. The third section embraces wills, the administration of estates and intestacy. The fourth section includes laws relating to ownership of land and of movable property, servitudes and rent, mortgages, the law of bailments, and the registration of titles to land. The Code also includes the subject of contracts.

This code will presumably apply to the Armenian Christians and the Jewish subjects of Turkey, as these communities are understood to have renounced their rights to the use of their religious law and have agreed to accept the new code. It will not apply, however, to American citizens in Turkey, if the Treaty of Lausanne is ratified. For, by Article VIII of that treaty, the Turkish Government recognizes the exclusive jurisdiction of American courts in regard to the *personal status* of American citizens, including their domestic relations, etc., and provides that the courts having the jurisdiction in such matters shall sit outside of Turkey. This provision will exempt American citizens to a limited extent from the operation of Turkish law and the jurisdiction of Turkish courts, leaving them subject to the law of their American domicile in this respect.

The old Turkish Civil Code which the new code replaces, was adopted in 1869, and is included in the volumes published by Young: "Corps de Droit Ottoman." The other Turkish codes, also included in the same volumes, are the Commercial Code, adopted 1850; the Penal Code, adopted 1858, revised 1863; and the Maritime Code, adopted 1863—all three modeled on the French Codes. These Codes have now also been revised, the Commercial Code including the addition of articles borrowed from the German code, and the Penal Code articles taken from the Italian Code.

It is interesting, in this connection, to note that the new Chinese Codes which have been promulgated, are largely based on the Japanese Codes, which, in turn, are largely borrowed from the German Code. The question of the abolition of extraterritoriality in China, in which event the new Chinese Codes will presumably become applicable to foreigners is now being the subject of investigation of an Extraterritorial Commission appointed under the provisions of the treaty signed at the Washington Conference.

The reform and modernization of Turkish laws has gone hand in hand with a reform in the administration of the law. The court system has been unified and secularized. The religious courts have been abolished. This was accomplished by the Act of April 8, 1924—the Judicature Reform Act. This Act did away with the courts of the "Cheri," which applied the law of the Moslem religion—and the courts of the Sacred Law, the Koran, have now been suppressed. Another class of old Turkish courts—those of the Evkaf, dealing with the succession to properties (vakoufs) have also now been presumably displaced.

Of the three former classes of Turkish courts, existing under the law of April 11, 1913, there remains now only the class of ordinary courts dealing with civil, commercial and penal matters. But these, too, have been modified. The old courts of appeal have been abolished in favor of the Court of Cassation. This court, corresponding to our Supreme Court, has been sitting at Eskeshehir, but it is to be removed to the capitol at Angora. It is composed of 41 judges, and is divided into several chambers or divisions, each having five to six members. Its jurisdiction is coextensive with the territory of the Republic, and it has authority to review the decisions of the lower courts of First Instance which handle minor offenses. It is not an appellate court in every sense of the term, as it does not hear an appeal on the merits, or review the facts, but only matters of pleading and procedure—i. e., a review of the law and not of the facts.

Under the law of April 8, 1924, above referred to, there are, in addition to the Court of Cassation, the following: (1) Councils of Elders; (2) Justices of the Peace; (3) The Courts of First Instance; and (4) Criminal Courts. The Councils of Elders presides over village courts in small civil cases and have

final decision in matters involving not over 5 Turkish pounds. In cases of from ten to fifty pounds they resort to mediation or arbitration of the matter. They may also hear and decide cases of over fifty pounds if the parties submit to their jurisdiction. The court is presided over by the head of the village, the other members being elected.

The justices of the peace, or magistrates are appointed by the Minister of Justice, and have jurisdiction in cases of petty misdemeanors, and in civil and commercial matters not involving over five hundred pounds.

The Courts of First Instance have a presiding Judge and two associates, and attached to the court are a deputy Judge, an examining magistrate and a solicitor (procureer). This latter is the protector of the accused as well as the prosecuting attorney, and is a safeguard against unjust arrest or accusation. These courts have jurisdiction in all civil and commercial proceedings and in cases of petty misdemeanors not within the jurisdiction of the Justices of the Peace. Where there are no special criminal courts they also have jurisdiction in cases of grave crimes. They have succeeded to the jurisdiction formerly exercised by the courts of the Evkaf, mentioned above, and the Cheri (the tribunals of the Sacred Law).

The Criminal Courts (cour d'assises), composed of a presiding Judge and four associates, have attached to them deputy judges and solicitors. Their jurisdiction covers all criminal cases. The Department of Justice has sought to do away with the law's delays. To facilitate this, there is attached to each court an examining magistrate who hears the complaints presented by a prosecuting officer, and decides as to whether they shall be heard by the criminal courts. His decision, in cases of grave crimes, is subject to review by the judge of the court. In this way many cases are disposed of without going to a formal trial and justice is expedited.

Constantinople has a special system of law courts of its own consisting of eight civil courts, three commercial courts, five courts for the trial of petty offenses, and one court for the trial of grave crimes. The courts of First Instance are here presided over by three judges, and the cour d'assises (criminal court) by five.

The "Capitulations" were the provisions of treaties which granted extraterritorial rights to foreigners in Turkey. But the latter also enjoyed other privileges sanctioned by "usage." In 1914 the Sultan denounced the system of extraterritoriality and declared the capitulations abrogated. But under the Treaty of Peace concluded with Turkey by the Allied Powers following the world war, the capitulatory régime resulting from treaties, convention or usage was re-established (Art. 261). Another article, however, provided for a Commission to prepare a scheme of judicial reform to replace the capitulatory system in Turkey. But by the Treaty of Lausanne between Turkey and the Allied Powers, the eventual abolition of the extraterritorial system in Turkey was agreed to by both parties. The Turkish representatives at Lausanne attempted to justify their unilateral action in abolishing the capitulations on the grounds that they were prejudicial to their political and economic interests, inapplicable to the then situation of their country, and contrary to international law. They argued that by reason of the reforms in the Turkish law and judicial organization, the capitulations were no longer necessary to afford protection to foreigners.

The United States has been in a peculiar position. Since this country was not at war with Turkey, former treaties theoretically continue in force. It has been the view of the United States that the capitulations continue in force until the Treaty of Lausanne recognizing their abolition has been ratified and put into force. On August 6, 1923, the United States concluded treaties with Turkey at Lausanne, which, however, have not yet been ratified by the Senate. The Treaty of General Relations as signed provided (Art. II) that "the High Contracting Parties" declare the capitulations concerning the régime of foreigners in Turkey completely abrogated, both as regards conditions of entry and residence and as regards fiscal and judicial questions, together with the economic and financial systems resulting from the capitulations." There was also included in the *procès verbal* an express recognition by the United States that the above article of the treaty contemplated the complete abolition of all the capitulations of whatever nature or origin.

The aim of Turkey, like that of China, was principally that of securing the right to tax foreigners, and thereby increase their revenues. In order to protect Americans from the consequences of the declaration of the Sultan which abrogated the capitulations in 1914, and thereby—in the view of Turkey—rendered foreigners subject to taxation—there was inserted an article (Art. XII) providing that American nationals and their property shall be exempt from the payment on account of the fiscal years prior to 1922-3 of any impost, tax or surtax to which, in virtue of the status they enjoyed on August 1, 1914, they were not subject.

By Article III of this treaty it is provided that the nationals of either country shall have free access to the courts of justice of the country, as well for the prosecution as for the defense of their rights in all the degrees of jurisdiction established by the law.

In addition to the legislation referred to above, the Turkish Government has enacted the law of April 22, 1924, which modified the civil and criminal procedure, and a statute of April 2, 1924, concerning the Turkish Bar. These statutes, with the new Turkish Constitution of April 20, 1924, have provided a system of law, which, if faithfully administered, should be adequate for the protection of foreign rights. Meanwhile Consular Courts have ceased to function, and the new arrangements, by reason of the delay in the ratification of the Treaty of Lausanne by the United States, have not yet come into effect.

Cost of Maintenance of R. R. Labor Board

The operating expenses of the United States Railroad Labor Board since its organization have been as follows:

April 16, 1920, to June 30, 1920, $54,213.97; July 1, 1920, to June 30, 1921, $413,371.45; July 1, 1921, to June 30, 1922, $369,920.84; July 1, 1922, to June 30, 1923, $347,916.03; July 1, 1923, to June 30, 1924, $306,517.09; July 1, 1924, to June 30, 1925, $312,631.98.

For the fiscal year ending June 30, 1926, $296,805.00 has been appropriated, and the Bureau of the Budget has recommended an appropriation of $285,220.00 for the fiscal year ending June 30, 1927.

SOVEREIGNTY IN JUDICIAL INTERPRETATION

By Charles Pergler

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PERHAPS the most controversial problem of political science is the nature of sovereignty. An attempt to deal with the question is not within the scope of this article. Yet, even for practical reasons, it may not be amiss to point out that in actual international life there is no such thing as absolute sovereignty if by this term we mean freedom of action, regardless of the rights of others. From one point of view the history of international relations is the history of a gradual, progressive limitation, upon the freedom of action of independent states.

States being the persons governed by international law, it may be said that, as in the case of natural persons the liberty of an individual ceases where the rights of another commence, so is the freedom of conduct of an international law person, viz., the state, limited by the rights of other persons, viz., of other states. There can be no license for the state in international society, any more than there is, or can be, license for the individual within the association of men we know as the state.

It may well be contended that limitations upon sovereignty, imposed by the necessities of practical international life, are not a limitation of independence of states, for the reason that these limitations, in a legal sense, are accepted and not imposed by any superior authority. There is the additional reason that the limitations being of an equal character and extent with regard to all independent states, and since they take no more from one than another once they are accomplished, the relative position of the members of society of nations remains unchanged. In other words, if powers are equally limited, the situation in effect remains the same, and, at least from one point of view, as a matter of fact and as regards the relative powers of the states involved, no limitation has taken place.

In considering judicial interpretation of sovereignty, we are almost inevitably forced to accept the view that to the problem of sovereignty there are two different sides and that one of these is the international, or external, while the other is purely internal.[1] "External sovereignty relates to the position of the state among other states," while internal sovereignty concerns "the relations between the state and all other persons or associations within its territory."

This brings up the dispute between two groups of political scientists as to the divisibility of sovereignty. But is there, of necessity, a conflict? And is it not the function of the thoughtful practical lawyer to reconcile the two apparently rival theories, if this can be done, even as the lawyer in court frequently must harmonize two apparently conflicting principles of law? Such harmonization has, indeed, been attempted in an essay from which the following passages merit quotation:

> "The preceding discussion of the two great political theories, in which is found asserted, in the one the indivisibility of sovereignty, in the other its divisibility, leads to the conclusion that the two theories are entirely congruous, in spite of their use of the same terms with different signification.
>
> "The applicability of the principle of each theory is confined to a distinct sphere. The analytical theory determines the nature of the internal organization of the state, of its municipal, including its constitutional, law; the international theory explains the nature of the mutual relations of states, the nature of international law. The analytical theory with its 'sovereignty' and kindred concepts affords no explanation of international law, nor the international theory with its 'independence' an explanation of constitutional law.
>
> "Thus it is plainly necessary to keep distinct the concepts of each theory, and there are a number of minor concepts the significance of which for the one theory or the other, for international or constitutional law, it is essential to determine."[2]

Legal theories, like many other theories, frequently are nothing more than an attempt to provide rational, or philosophic, justification for a certain condition of things. It has been shown, conclusively, it is believed, that the Austinian conception of law, still dominant among the Bench and Bar of America, is valid if applied to a certain stage of legal development, but is fallacious if the claim is made that always and under any and all conditions that only is law which is the command of the sovereign.[3] It is not the function of the judiciary, as judiciary, to formulate new theories, no more than it is the judge's function to devise new laws. That is the law maker's task, though it is undeniable that occasionally judges face new situations and must apply to them old rules, or, following accepted canons of legal reasoning, must announce what perhaps does appear to be a new rule, which, however, always may be changed or modified by the legislative power. But if we bear in mind that pioneering is not the duty, or even the right, of the judge, in his official capacity, it is the more readily understood why the American judiciary, when discussing sovereignty at all, gave expression to views prevalent at the time the various cases came for adjudication before it and why it adopted what by some has been called the older, and by others, the classical, conception of sovereignty. It is perhaps more accurate to say that the American judiciary has expounded the constitutional theory of sovereignty, as was really unavoidable, since the judiciary is wholly a creation of municipal law, including in that term the state and federal constitutions.

Justice Story defined sovereignty, in its largest sense, as the "supreme, absolute, uncontrollable power; the *jus summi imperii;* the absolute right to govern."[4] John Marshall said: "The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction. All exceptions, therefore, to the full and complete power of a nation within its own territories must be traced up to the consent of the nation itself. They can flow from no other legitimate source."[5]

1. Merriam, C. E., History of The Theory of Sovereignty Since Rousseau.

2. Crane, R. T., The State in Constitutional and International Law.

3. Lawrence, T. J., Some Disputed Questions in Modern International Law, Essay I., Is There a True International law?

4. Cherokee Nation vs. Southern Kansas R. R. Co., 33 Federal Reporter 900.

5. The Exchange vs. McFaddon, 7 Cranch, 136.

Marshall's statement is a perfect description of the nature of sovereignty from the constitutional point of view, but it is not necessarily inconsistent with the theory of external sovereignty which deals with the relations of states.

Occasionally the courts have failed to distinguish between the state and government and have not realized that the government is no more than an organ of sovereignty. Thus in one of the decisions we find this statement: "The sovereignty of a nation, or state, may, in all respects, be absolute and unconditional, except the limitations it chooses to impose upon itself, but the sovereignty of the government organized within the state may be of a very limited nature, extending to few or many objects, unlimited as to some, but restrained as to others. The people comprising a state may divide its sovereign powers among various functionaries, and each, in a limited sense, would be sovereign in respect to the powers confided to each." [6] But, on the whole, such confusion is fortunately rare, as is indicated by the following language: "There is a distinction between the government of a state and the state itself. In common speech and apprehension they are usually regarded as identical, and ordinarily the acts of the government are the acts of the state, and because within the limitations of its delegation of power the government of the state is generally confounded with the state itself. The state itself, however, is an ideal person, intangible, invisible, immutable. The government is an agent and within the sphere of its agency a perfect representative; but outside of that it is a lawless usurpation. The constitution of the state is the limit of the authority of its government, and both government and state are subject to the supremacy of the Constitution of the United States and of the laws made in pursuance thereof." [7]

The founders of the republic realized that government is an agency.

"The federal and state governments are, in fact, but different agents and trustees of the people, constituted with different powers and designated for different purposes." [8] An attempt to differentiate between the state and its people proved unsuccessful early in the history of the republic.

"A distinction was taken at the bar between a state and the people of a state. It is a distinction I am not able of comprehending. By a state forming a republic (speaking of it as a moral person) I do not mean the legislature of the state, the executive of the state, or the judiciary, but all the citizens which compose that state, are, if I may so express myself, integral parts of it; all together forming a body politic." [9]

6. Union Bank vs. Hill, 3 Caldw. (Tenn.) 325.

7. Poindexter vs. Greenhow, 114 U. S. 270; Grunert vs. Spaulding, 78 N.W. (Wis.) 606.

8. Madison, James, The Federalist.

9. Penhallow et al. vs. Doane's Administrators, 3 Dallas, 54.

LATIN-AMERICAN LEGISLATION

Child Labor Law in Argentina—Dearth of Legislation in Brazil—Important Financial Measures Passed in Chile on Advice of American Financial Commission—Law Establishing Central Bank in Same—National Mortgage Bank Authorized in Colombia—Costa Rica—Financial Legislation in Ecuador—Conventions Ratified in Guatemala—Important Mining and Oil Laws Passed in Mexico—Revolution Slows Up Law-Making in Nicaragua—Reforms in Panama Codes—Peru—Salvador—New Constitution in Venezuela

Argentina

Legislation, 1924

Law No. 11,309 (July 2) amends article 204 of the Penal Code in relation to the sale of narcotics.

Law No. 11,314 (Oct. 7) appropriates 15,000 pesos for the expenses of a conference of the Federation of Bar Associations on uniform civil procedure and judiciary acts.

Law No. 11,317, restricting child labor and employment of women. Employment of children under 12, or over if they have not completed prescribed work, is prohibited. (Arts. 1-4). No female under 18 may be employed for work in streets or public places (Art. 4). Hours of labor for women under 18 may not exceed 6 a day or 36 a week, for women over 18, 8 and 48 hours (Art. 5). Night work for women (except in theatres, etc., for women over 18) is prohibited. (Art. 6). A noonday rest period of 2 hours is required (Art. 7). Employment for women or children in dangerous or unsanitary occupations, a number of which are specified in the law, or for six weeks prior to child-birth, is prohibited (Arts. 9, 13). Discharge for pregnancy is prohibited and the mother's job must be kept for her (Arts. 13, 14) and nursing periods allowed (Art. 15). Criminal penalties are imposed for violations of the law. Law No. 5291 is repealed.

Law No. 11,318 (Dec. 5) extends the Rent Law to Sept. 30, 1925.

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P. J. E.

Brazil

There has been a dearth of legislation of comparative law interest in Brazil within the past year. The following are the few gathered from the "Diario Official" since last review.

Executive Decree, No. 16,761, of December 31, 1924 (D. O. March 28, 1925), "prohibits the entry

into the national territory of immigrants, defined as 2nd and 3rd class passengers, under the circumstances stated in Law No. 4,793 of Jan. 6, 1924. Such entry into the country shall be permitted only to the immigrant presenting to the port authority at the point of debarcation, documents proving his good conduct, and with his book of identification with his photograph, and statements of his age, nationality, civil status and profession, and with his finger prints and personal characteristics; all duly visaed by the Brazilian authorities at the point of embarcation. Vessels bringing any person in violation of these requirements must keep such persons on board and return them to their country of origin; with numerous other provisions imposing great caution on the steamship companies.

Executive Decree, No. 16,925, of May 7, 1925 (D. O. May 30), publishes and promulgates a new Extradition Treaty between Brazil and Paraguay. Natives of each country escaping into the other are subject to extradition as well as foreigners to both.

Executive Decree, No. 17,042, of September 16, 1925 (D. O. Nov. 29), provides detailed and very intelligent regulations of the Forestry Service of Brazil.

Law No. 4,974, of December 1, 1925 (D. O. Dec. 5), makes provision for cases in which the Presidential veto is exercised against appropriation laws, and laws fixing the number of the military and naval forces, enacting that in such cases the Budget and the authorized forces of the previous year shall remain effective until the veto is overthrown by the Congress or new laws are passed on the subjects.

J. W.

Chile

Legislation, 1924

Law No. 4023, June 13 (Diario Oficial No. 13925, July 12: Boletín de las Leyes, July p. 1007) provides for an obligatory official way-bill for transportation of live-stock.

Law No. 4053, Sept. 8 (Diario Oficial No. 13,989, Sept. 29: Boletín de las Leyes Sept. p. 1324) regulating Employment contracts. The law is applicable to all labor contracts, except farm and domestic labor and factories and business houses having less than 10 employees (Art. 1). The term of contracts is one year and may be oral or written except in case of technical employees when it may be up to five years and must be written. Such contracts are governed by the Civil Code. In the case of oral contracts, the employer must however deliver a certificate of employment setting forth salary and other terms (Arts. 2-4, 9). The contract may be terminated however by either party on six days' notice (Art. 8). Eight hours is the maximum work-day or 48 hours a week, except in special cases or for extra pay, with a maximum of ten hours a day (Arts 11-14). Wages must be paid in currency (Art. 15) are not subject to attachment (Art. 19) and must be free of deduction for fines, medical service, rent, etc. (Art. 20). Minimum wage boards are provided for and equality of wages between men and women for like work (Arts. 22, 23). Minors and married women may receive their pay direct and have separate property rights in their earnings (Art. 18). Contracts with labor unions are provided for (Art. 24 seq.). Restrictions are imposed on child labor e. g. employment of children under 12 (or 14, if they have not completed school work), and nightwork for those under 16, in certain unsanitary occupations under 18, is prohibited (Arts. 29-31). The functions of the Labor Department are prescribed (Arts. 38, 39). Violations of the law are punishable by fines or in certain cases, by closing of Shop (Arts. 42 seq.).

Law No. 4054, Sept. 8. (Diario Oficial No. 13987, Sept. 26, Boletín, Sept. p. 1349). Makes health and accident insurance of employees obligatory; local official insurance boards are provided for, and premiums are paid partly by the employer, the employee and the State (By Decree-Law 61, Diario Oficial 14,011 Oct. 24; Boletín Oct. p. 1939, the operation of the law was postponed to April 1st, 1925).

Law No. 4055, Sept. 8 (Diario Oficial No. 13987, Sept. 26: Boletín Sept. p. 1364) amends the Workmen's Compensation Acts, (laws Nos. 3170, Dec. 27, 1916 and 3379, May 10, 1918). Insurance companies insuring against accidents and occupational diseases are subject to State supervision (Art. 23). Summary procedure in the courts is provided for (Art. 32 seq.). Executive regulations as to safety appliances and sanitary conditions are authorized (Art. 38 seq.).

Law No. 4057, Oct. 8. (Diario Oficial No. 13,989, Sept. 29; Boletín Sept. p. 1397) provides for the legal organization, powers and duties of trade and professional unions, partaking also of the character of mutual benefit societies. Profit sharing by employes in business and industrial companies is provided for (Arts. 16-21) Government employees may not form unions (Art. 23).

Law No. 4058, Sept. 8 (Diario Oficial No. 13990, Sept. 30, Boletín Sept. p. 1424) provides for the incorporation of cooperative societies.

Law No. 4059, Sept. 8, (Diario Oficial 13,988, Sept. 27; Boletín Sept. p. 1441) regulates the relations between employers and employees other than laborers. If the contract is not in writing, it will be presumed made on such terms as the employee claims (Art. 3). If the establishment employs more than ten, 75% in number and in amount of salaries must within 5 years be Chilean, (including foreigners married to Chileans or domiciled in Chile for more than ten years) (Arts. 6, 7). Account books must be kept in Spanish (Art. 8). Hours of labor must not exceed 48 a week, or with overtime, 56: a rest period of at least 2 hours a day, and two weeks' vacation with full pay are obligatory (Arts. 10-12). Twenty per cent of the net profits (not to exceed however 25% of the yearly salary) must be distributed annually to employes (Art. 17). Compulsory savings accounts are provided for (Art. 20 seq.). Normally, one month's notice is required to terminate the contract (Art. 30), the employer being required to pay, in addition, if he discharges, the equivalent of as many month's salary as the employee has worked years (Art. 31) and in case of sickness, the employee is entitled for four months to part pay (Art. 32). (By Decree-Law 188, Diario oficial 14065, Dec. 31, Boletín Dec. p. 2741, this law was repealed, see infra).

Decree-Law No. 4 (Diario Oficial 13981, Sept. 17; Boletín Sept. p. 1507) exempts from income tax salaries up to 4,800 pesos.

Decree-Law No. 24 (Diario Oficial 14013, Oct. 27; Boletín Oct. p. 1768) prohibits night work in bakeries.

Decree-Law No. 43 (Diario Oficial 14008, Oct. 21; Boletín Oct. p. 1781). Reorganizes the Ministry of Industry, Public Works and Railroads, creating instead two Departments or Ministries; Public Works and Communications; and Agriculture, Industry and Colonization.

Decree-Law No. 44 (Diario Oficial 14008, Oct. 21; Boletín p. 1796). Creates a new Department or Ministry, that of Hygiene, Charity and Social Prevision.

Decree-Law No. 27 (Diario Oficial 13997, Oct. 8; Boletín p. 1826) reduces the membership of the Supreme Court from 13 to 11.

Decree-Law No. 71 (Diario Oficial 14016, Oct. 30; Boletín p. 1832) prohibits lotteries in any form.

Decree-Laws 26 (Diario Oficial 14031, Nov. 18; Boletín Nov. p. 2101) and 102 (Diario Oficial 14031, Nov. 18; Boletín Nov. p. 2238) require all persons over 18, including foreigners residing in the country over 2 months, to obtain police identification cards, to be renewed every four years, finger-prints being registered.

Decree-Law No. 93 (Diario Oficial 14028, Nov. 14, Boletín Nov. p. 2274) regulates Stock Exchange operations. Government authorization is required for the establishment of stock exchanges, limited to one in each city, except that existing exchanges are permitted to continue (Art. 1). Listing is subject to approval of a Government inspector (Art. 2). Listing of securities of foreign companies not represented by duly authorized agents in Chile is prohibited (Art. 3). A written instrument is required to perfect sale of stock (Art. 7). Brokers must deposit, with the exchange, 15% on future contracts; if the term be more than 45 days, 30% (Arts. 8, 9). Transfer of stock must be registered on the corporation books within 30 days (Art. 11).

Decree-Law No. 90. (Diario Oficial No. 14,038 Nov. 26; Boletín Nov. p. 2327) creates the Bureau of Industrial Property (for patents and trade marks), amending the laws as to the fees payable and in some other minor respects.

Decree-Law No. 77 (Diario Oficial 14031, Nov. 18; Boletín Nov. p. 2348) establishes a 10% admission tax (15% on horse races).

Decree-Law 188. (Diario Oficial 14065, Dec. 31; Boletín Dec. p. 2741) regulates the relations between employers and employees of every kind, (repealing Law 4059 supra, q. v.) except public employees, farm and domestic servants and laborers (Arts. 1, 2). Contracts must be in writing (Art. 3). The provision as to 75% of employees, in number, being Chilean is retained; the time for operation may however be extended by the President in special cases to 10 years (Art. 6). Many of the other principal provisions of Law 4059 are also retained; the rest period however is cut down to 1½ hours (Art. 13) and the article as to vacations omitted. Compulsory life insurance is required. (Art. 28 seq.). (Typographical errors were corrected on republication in Diario Oficial 14078, January 2, 1925, Boletín Jan. 1925 p. 247).

Decree-Law No. 160, Dec. 31. (Diario Oficial 14078 Jan. 2, 1925; Boletín Jan. 1925, p. 151) prescribes the fees for concessions of docks, private railways, electric utilities and water rights.

Legislation, 1925

In spite of somewhat disturbed political conditions, Chile made notable legislative progress under the advice of an American Financial Commission, headed by Dr. E. W. Kemmerer, under whose guidance Colombia in 1923 achieved such notable reforms. The gold standard was adopted, exchange stabilized, a Central Bank created, a modern banking law and a new negotiable instruments act were passed and reforms in taxation and customs administration suggested, which are receiving consideration. The other members of the Commission were Howard M. Jefferson (who had also been on the Colombia Mission), Harley L. Lutz, Joseph T. Byrne and William W. Renwick.

The Monetary Bill provides for full coinage of gold and the convertibility of the previous paper peso into gold at the rate of 6 d. (British), about 12.17 U. S. Currency.

The new Central Bank closely resembles the Banco de la República of Colombia (established by the Kemmerer commission) which in turn was modeled largely on the United States Federal Reserve Bank. The greater part of the capital stock is held by the commercial banks; the Government of Chile is a large stockholder and subscriptions were opened to private interests.

Decree-Law No. 207. (Diario Oficial 14073 Jan. 10; Boletín Feb. p. 619) approves the Universal Postal Agreements of the Madrid Congress of Nov. 30, 1920.

Decree-Law No. 252 (Diario Oficial 14,106, Feb. 18; Boletín Feb. p. 766) as to electric, telephone and wireless installations and water rights. A comprehensive law of 115 articles, repealing Law 1665 of Aug. 4, 1904 and amending Decree-Law 160 of Dec. 18, 1924 and Decree-Law 197 of Jan. 7, 1925. The President is authorized to grant provisional and definitive concessions (Arts. 4, 5); applications therefor are published, landowners being given a hearing if they wish to oppose (Art. 8). The provisional concession gives a right to carry on preliminary studies; and a preferential right to obtain a definitive concession (Arts 11, 12). Executive consent is required for a public utility. The term cannot be less than 30 nor more than 90 years (Art. 23), but may be renewed for successive periods of 30 years on certain bases (Art. 30). The State may acquire an electric utility at any time, upon payment; after 10 years from grant of definitive concession of the depreciated value; prior to ten years, of such value plus estimated profits for the balance of the 10 years. (Art. 32). The President is empowered to regulate wave-lengths and time-tables, etc., of radio stations (Art. 36). Easements for concessionaries, are authorized (Art. 40 seq.). Concessions may be granted or transferred only to Chileans or Chilean companies, and 75% of the management and technical personnel must be Chilean (Arts. 60, 61). Rates are established on a basis of yield not to exceed 15% on the invested capital (Art. 73). Official supervision is provided for (Art. 84 seq.). Injury to property of electric companies is made a criminal offense (Arts. 105 seq.). Companies which have received concessions within the past 10 years may apply for a new concession under the present law (Art. 112). Electric power produced under new concessions may not be exported (Art. 113).

Decree-Law No. 261 (Diario Oficial No. 14,107 Feb. 19; Boletin Feb. p. 817) Rent Law.

The Decree Law of August 21, 1925 "La Revista Commercial" of Valparaiso, Sept. 15, 1925, says, creates a new Central Bank under the name

of "Banco Central de Chile" (Article 1). Authorizes a capital of 150,000,000 pesos subject to increase to 200,000,000 pesos by vote of the directors and the approval of the President of the Republic (Article 6). Fixes the par value of the shares at 1,000 pesos (Article 7). Shares are to be divided into four (4) classes—A, B, C and D (Article 12). All shares shall enjoy equal rights as to assets and dividends. The "A" Shares (20,000,000 pesos) are to be subscribed for by the Nation (Articles 14-16). The "B" shares shall be subscribed by National banks and are not subject to hypothecation. The National or Domestic banks must subscribe and maintain an amount equal to 10% of their paid up capital and surplus (Articles 17-22). The total initial amount of "C" and "D" shares shall not exceed 61,000,000 pesos. The "C" shares shall be subscribed by foreign banks doing business in Chile. They are not subject to hypothecation. The foreign banks must subscribe and maintain an amount equal to 10% of their surplus and capital in Chile, but in any event an amount proportionate to the assets in Chile in relation with the total assets (Articles 23-28). Failure to comply with these requirements after demand by the Superintendent of Banking shall subject the offending bank to revocation of its charter and liquidation by the Superintendent of Banking (Article 30). The "D" stock may be subscribed for by the general public; subscriptions are limited in the first instance to 10 shares (Article 31).

The bank shall be managed by a Board of ten directors (Article 33). These directors shall be appointed as follows: 2 by the President, 2 by the "B" stock, 1 by the "C" stock, 1 by the "D" stock, 2 by Enumerated Commercial organizations, 1 by the Directorate of the Labor Federation (Articles 33-38). The Government directors, "D" directors and Association Directors cannot be members of Congress or directors or employees of banks (Article 39).

The Board shall elect the officers of the bank and its managers. Registrations on banking operations are carefully provided for (Articles 59 et seq.) and include: (a) Prohibition of floating credits and over-drafts. (b) Purchase or discount of paper of more than 90 days' maturity, except when secured by agricultural products or live stock, in which case the maturity may be extended to six months. (c) All paper purchased or discounted must be either two name paper or else secured by bills of lading, warehouse receipts or the like, with a margin of at least 35%; or bank drafts on foreign banks. (d) Prohibition of paper given for capital purposes or speculation. (e) Paper may however be discounted for banks if secured by stock market collateral, with a 25% margin, and such loans shall in no case exceed 25% of the capital and surplus of the re-discounting bank. (f) Government and Municipal securities must not exceed 20% of the capital and surplus of the Central Bank. (g) The Central Bank may not buy its own shares or shares of stock companies.

The Bank shall act as a clearing house (Article 56). The Bank is authorized to transact a general foreign exchange business; receive deposits without interest (if on demand). The Bank shall establish a rediscount rate, but it is prohibited from rediscounting for banks who may charge their customers more than 2 1/3% above rediscount rate (Articles 59-60). The usual restrictions as to real estate are provided for (Articles 61-62). The Bank shall act as the principal Government depositary and Fiscal Agent (Articles 63-64). The Bank shall have the monopoly of note issues (Art. 65). The bank's issue shall be legal tender and receivable for all taxes. It shall also be receivable for customs duties payable in gold, in the proportion of three to one. It shall be payable to bearer by presentation, at the bank's option: (a) Chilean gold coin; (b) Bullion; (c) At sight on three days' draft on London or New York, payable in gold, the rate of premium rate charged shall not exceed expenses of shipment and interest (Article 61). If the notes are presented at an agency, they may also be paid by sight draft on the head office at Santiago (Article 70). Failure to convert on presentation will cause the bankruptcy and liquidation of the Bank (Article 72). Bank notes are preferred claims (Article 73). Detailed provisions are contained in the law for the conversion of current treasury notes (Articles 71-88). The Bank must maintain a gold reserve of 50% against circulation and deposits; either in gold or bullion in Chile or abroad; or deposits payable in London or New York (Articles 83). If the reserve falls below the legal requirement, the Bank shall be penalized by fine on a sliding scale running from 3% up, on the deficiency and in this event the rediscount rate may not be lower than 7% (Articles 85-86). The bank shall be subject to the inspection of the Banking Superintendent (Artices 89 et seq.). The Bank shall submit and publish annual and monthly reports (Articles 91-92). The directors employed shall be personally liable in case of unauthorized operations (Article 98). The net profits of the Central Bank shall be distributed: 20% to surplus (until such surplus reaches 50% of the capital, thereafter 10%); 5% for employes; a cumulative dividend of 8% on the paid up capital; and the remainder one-half as an extra dividend or to constitute a reserve for future dividends, and one-half to the Government, until 12% is paid on the stock, thereafter 75% to the Government and 25% to the stock. The Bank shall be exempt from any other tax, except the general real estate tax and customs and export duties; but dividends received by shareholders are subject to the income tax (Article 100).

Decree Law No. 559, September 26, 1925. ("La Revista Commercial" of Valparaiso, Oct. 17, 1925 seq.). General Banking Law—A Banking Department is created in the Treasury Department under the direction of a Superintendent of Banks, appointed by the President (Articles 1-3). Banks shall contribute to the expenses of the department (Article 8). Banking institutions must be organized as stock corporations (Soc. Anon.) subject to approval and licensed by the Superintendent of Banks (Article 10). The Superintendent of Banks shall also grant licenses to foreign banks doing business in Chile. The Banking business is restricted to licensed banks under penalty of fine and in case of loss to the public, of criminal prosecution (Articles 11 and 17). Licenses shall be granted to 1940, and thereafter for 40 years (Article 12). Foreign banks are in general subject to the same rights and liabilities as Chilean institutions; but Chilean creditors have a preference as to the assets in Chile (Article 30). Both National and Foreign banks must have a minimum specified capital (Articles 14 and 59). Banking institutions must deposit

securities with the Superintendent of Banking of from 25,000 to 50,000 pesos according to the capital of the depositing bank (Article 18). These deposits shall be applied to penalties and fines that may be imposed (Articles 18-22). Directors and employes are personally liable in case of illegal operations, in addition to criminal liability (23 et seq).

Articles 27 to 43 deal with the powers and duties of the Superintendent of Banks as to inspection and examination and licensing of Banks; the imposition of fines and penalties and the liability of banks that suspend or are insolvent or refuse examination or otherwise violate the banking law, or whose continued operations would, in the opinion of the Superintendent of Banks, endanger their depositors or stockholders. Commercial Banks may be authorized to receive savings deposits, which shall be entitled to preference in the event of liquidation or bankruptcy (Articles 44-49). The Superintendent of Banks may grant trust powers to Commercial Banks (Articles 50-55). Securities to a value of 500,000 pesos must be deposited initially with the Superintendent, subject to increase upon his demand.

Commercial Banks—(Articles 57 et seq.) The Certification of incorporation and by-laws must contain specific provisions, in addition to those required by article 426 of the Commercial Code and Article 1 of the Regulation of December 22, 1920. The minimum capital for Commercial Banks shall be 5,000,000 pesos in cities of over 100,000 inhabitants; 2,000,000 pesos in cities of over 20,000 and 1,000,000 pesos in all other towns and cities. Existing banks are however given two years in which to increase their capital. (Articles 59-62). Capital and surplus must be equal to 25% of the bank's deposits. (Article 62). Banks must maintain a reserve in their vaults or with the Banco Central of 20% against demand deposits and 8% against time deposits. Violation is subject to a progressive fine. Restrictions on operations of Commercial banks are provided in Article 75; loans or discounts may not be made for more than one year and acceptances are subject to certain specified limitations.

Decree-Law No. 588, September 29, 1925, International Property Law (patents and trade-marks). Repealing the old laws on patents and trade-marks including Decree-Law 358 of March 17, 1925. An analysis of this law was published in Special Circular No. 121 of the Division of Commercial Laws of the Department of Commerce under date of January 29, 1926.

P. J. E.

Colombia

Legislation, 1924

Law 68 (Dec. 26, Diario Oficial Feb. 2, 1925) authorizes the Government to organize a national Mortgage Bank, to be known as Banco Agricola Hipotecario, with an authorized capital of $2,000,000, of which the government is authorized to subscribe up to $1,500,000. The Bank and certificates (cédulas) issued by it are exempt from taxation. The Nation guarantees payment of principal and interest of certificates (Art. 9). Mortgage loans must be for a term not less than 5, nor more than 20 years; loans may also be made to farmers, secured by pledge or personal guaranty, not to exceed six months (Art. 11). The Bank may act as real estate agent (id.). Mortgage certificates (cédulas) may be issued up to an authorized amount of $10,000,000, payable either in Colombian or foreign currency, by the operation of a quarterly cumulative sinking fund. These cédulas are legal investments for trust funds (Arts. 12-19). $20,000 is the limit of a mortgage loan to any one individual or company; the rate of interest may not be more than 2% above the rate of its cédulas (Art. 23); only first mortgage loans may be made, on revenue producing property, for an amount not exceeding 50% of the appraised value; summary foreclosure procedure and appointment of a receiver are provided for. (Art. 20 seq.). Loans are restricted to farmers and cattlemen (Art. 39).

The same law (No. 68) also contains some minor amendments of the Chattel Mortgage (prenda agraria) law, No. 24 of 1921, and of the Banking law (45 of 1923), among others subjecting insurance companies to the supervision of the Banking Superintendent (Art. 55).

Legislation, 1925

Law 8 (Jan. 22, Diario Oficial No. 19815, Feb. 2) amends Arts. 154 and 156 of the Negotiable Instruments law (46 of 1923), the amendment allowing 15 days within which to formulate protest after noting; and further amends (by amending article 48 of law 68 of 1924, supra) the chattel mortgage law.

Law 15 (Jan. 31, Diario Oficial, No. 19821, Feb. 9) on Social Hygiene and Public Charity. The reorganized Department of Health is given broad powers and duties.

Law 17 (Feb. 5: Diario Oficial No. 19822, Feb. 10). Directs certain amendments to the by-laws of the central bank (Banco de la República) and amends Arts. 1 and 32 of the Banking Law (45 of 1923).

Law 34 (March 9, Diario Oficial No. 19848, March 12) on denatured alcohol, tobacco and slaughter house taxes may no longer be farmed out, pending contracts however are not affected.

Law 63 of 1925 (Nov. 7) Diario Oficial No. 20045 Nov. 11, 1925 requires the containers or wrappers of manufactured articles to be stamped with the name of the manufacturer, preceded by the words "Industria Colombiana"; in the case of food products, the ingredients must be stated; the law contains other provisions designed to prevent Colombian goods from being palmed off as foreign importations.

Law 83 (Nov. 18, Diario Oficial No. 20055 Nov. 23) repeals Art. 81 of Law 31 of 1925 and provides an income tax exemption of $400 for unmarried persons, $600 for married and an additional $50 for each dependent; amends Item 225 of the Tariff and authorizes the monopoly by the Department of denatured alcohol, fixing a maximum price of 30c a litre.

Law 84 (Nov. 18, Diario Oficial No. 20069, Dec. 10). Budget. In addition, there is a provision requiring certificates of payment of income tax to be presented to the Notary upon execution of transfers inter vivos, leases or liens of real estate; court sales are excepted (Art. 3).

Executive Decrees

Among important executive decrees are: on Insurance Companies, No. 655 (April 25, 1925, Diario Oficial 19892, May 7th); on Pearl Fisheries,

No. 625 (April 22, Diario Oficial 19889 May 4th); on Warehouses, No. 621 (April 20, Diario Oficial 19885 April 29, 1925).

Jurisprudence

In re Corchcuclo, Supreme Court, November 14, 1924 (Gaceta Judicial No. 1618, May 20, 1925). The law (Art. 8, law 64 of 1923) prohibiting private lotteries does not infringe the liberty of engaging in "honest occupations" guaranteed by the Constitution. In the case of Riascos & Co., however, the court held that such law, in so far as it attempted to affect existing valid contracts for lotteries, by prescribing regulations as to distribution of premiums, different to those of the contracts, was an unconstitutional impairment of the obligations of contracts and not a valid exercise of the police power.

Cabal vs. Molina. Supreme Court, March 18, 1925 (Gaceta Judicial No. 1615, April 22, 1925, page 184). A farmer lawfully setting fire to his fields and exercising due care, is not liable if a spark is carried by a sudden gust of wind and sets fire to a neighbor's cane fields, this being a fortuitous event, or Act of God.

P. J. E.

Costa Rica

Law of Indemnification for Work Accidents. In La Gaceta of January 6, 1925 appears Law No. 53 on Work Accidents. Under this law an employee, in case of accident, is entitled to a daily compensation equal to one half of his daily wages. For partial permanent incapacity an employee is entitled to an indemnification equal to one-half of the reduction which the accident causes in his salary, and in case of permanent and absolute incapacity for all work an employee is entitled to an income equal to two-thirds of his salary. In addition, the employer must furnish medicines and medical treatment. No compensation is payable if it is proved that an accident is due to drunkenness on the part of an employee. An employer may substitute his liability under the law by taking out insurance in the National Insurance Bank. The law does not become effective until 60 days after the National Insurance Bank gives notice to the public in the official journal that it is ready to assume accident risks. Up to January 1, 1926, no such notice had been given.

International Central American Tribunal. On May 22, 1925, the Congress approved the appointment, made by the President of the Republic, of the following members of the International Central American Tribunal in accordance with Articles II, IV and V of the Convention for the Establishment of an International Tribunal, which was signed in Washington, D. C., at the final session of the Conference on Central American Affairs, February 7, 1923: Cleto Gonzalez Viquez, Octavo Beeche, Luis Castro Ureña and Carlos Maria Jiménez.

International Commissions of Inquiry. In accordance with the terms of the Convention on Commissions of Inquiry, signed in Washington, D. C., by the delegates of the Central American Republics at the final session of the Conference on Central American Affairs, February 7, 1923, the Congress has approved the appointment of Lic. Andrés Venegas, Lic. Luis Anderson, Alejandro Alvarado Quiros, Rafael Arias and Arturo Volio to act as members in these Commissions of Inquiry.

Foreign Corporations in Costa Rica. After being amended several times in the past few years, Article 151 of the Code of Commerce of Costa Rica, dealing with the requirements to be satisfied by foreign corporations desirous of doing business there, has been restored to its original form by Decree No. 27, dated October 29, 1925. (La Gaceta, October 30, 1925.)

Regulation of Bakeries and Meat Markets. The operation of bakeries is regulated by Decree No. 9 of January 27, 1925. (La Gaceta, February 3, 1925), and Decree No. 10 of April 10, 1925, regulates the operation of meat markets. (La Gaceta, May 17, 1925.)

Certain Ships Exempt From Port Dues. Decree 99 of April 4, 1925 provides that ships flying the flag of any of the five Central American Republics and engaged exclusively in service between the ports of Costa Rica or between these and the ports of any of the other Central American Republics shall be exempt from the payment of port dues. (La Gaceta, April 7, 1925.)

Ratification of Pan American Sanitary Code. The Pan American Sanitary Code, signed in Havana on November 14, 1924, was ratified by the Congress of Costa Rica on June 20, 1925. La Gaceta, July 7, 1925.)

Pensions to Employees of the Public Registry of Property. A law granting pensions to the employees of Public Registry of Property was promulgated on August 18, 1925. The pensions vary from two-fifths of an employee's salary for ten years' service, to full salary for thirty or more years' service. (La Gaceta, August 20, 1925.)

Life Insurance Taken Over by State. Decree No. 30 of October 22, 1925, provides that on November 1, 1925, the National Bank of Insurance shall take over the existing monopoly of life insurance. Contracts of insurance in existence on that date are to continue to be binding on the contracting parties, provided they are registered at the office of the Superintendent of Insurance prior to February 1, 1926. This monopoly does not cover co-operative or mutual insurance carried by companies existing on the date of this decree which were formed to handle this class of insurance. (La Gaceta, October 28, 1925.)

Exclusion of Cooli Labor. The entrance into Costa Rica of coolie labor is absolutely prohibited by Decree No. 2 of October 26, 1925. "Cooli," or "coolie" is defined as a native workman of the Orient, who leaves his country under a contract of labor. (La Gaceta, November 6, 1925.)

Regulation of Commercial Travelers. Rules and regulations covering commercial travelers in Costa Rica are prescribed by Decree No. 33 of November 3, 1925. Commercial travelers outside of Costa Rica intending to carry on their profession in that country must: (1) possesses a certificate showing that they are authorized to act as salesmen and a list of samples they carry, which documents must be authenticated by a Costa Rican Consul; (2) exhibit these documents to a Collector of Customs upon landing in Costa Rica, so that this official may check them and issue to the traveler a third certificate; and (3) apply to the Governor of the Province so that he, upon collecting a fixed tax of

eight colons, may issue a license good for the whole country.

If a traveler brings with him samples and these have no commercial value, no duties have to be paid. If the samples have a commercial value, they will be admitted free of duty, but the traveler must deposit the amount of these duties or give a bond therefor, which duties or bond will be returned to him when his samples leave the country.

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Ley Organica del Servicio Consular, (Decreto No. 46 del 7 de Julio, 1925); Contiene además un formulario y leyes sobre Registro del Estado Civil, Sucesión Testamentaria, Notariado, Ciudadanía, Entrada y Expulsion de Extranjeros, Pasaportes, Sanidad Marítima, etc. Imprenta Nacional, San José, Costa Rica. 1925.

Jurisprudencia Civil, Extracto de la doctrina que contienen las principales sentencias de la Sala de Casación de la Republica de Costa Rica, dictadas durante los años de 1919 a 1924. Por el Lic. Jorge Guardia. Imprenta, Librería y Encuadernación, Alsina, San José, Costa Rica. 1925.

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Colección de Leyes y Decretos, segundo semestre de 1924, (2 tomos); primer semestre de 1925. Edición oficial, Imprenta Nacional. San José, C. R.

Sentencias de la Corte de Casación; segundo semestre de 1919 y de 1920; primer semestre de 1921—segundo semestre de 1924 y primer semestre de 1925, (2 tomos). Imprenta Nacional, San José, C. R.

W. J.

Ecuador

Legislation

Decree of the Provisional Government, October 9, 1925 for the organization of the (national) "Central Bank of Ecuador," bank of issue and rediscount. Duration 50 years, subject to renewal by act of Congress. The principal office to be Guayaquil and Quito, with power to establish branches and agencies, including abroad. It is a private institution, the state assuming no responsibility, except as provided in the law. Authorized capital 2,000,000 condors (approximately $10,000,000) subject to increase to 3,000,000 upon application of the President and 5,000,000 on application of Congress.

Two classes of shares A and B with equal capital rights; "A" shares to be subscribed and paid for by the present banks (other than mortgage banks), including branches of foreign banks, to the extent of not less than 12% of their capital and surplus. "B" shares to be open to public subscription or subscribed by the state. If the banks do not subscribe as required, they shall be liquidated. The directors are approved and elected: 3 by the government; 5 by the banks (A stock) and up to 3 by class B stock. The Bank shall have the excusive right of issue, the outstanding private bank issues being taken up by the Central Bank in the manner provided in the law. Its notes constitute a preferred claim, are legal tender and receivable for all government dues. A "gold reserve" of 50% is required which may be either coin or bullion in its vaults, or demand deposits in first class banks in London or New York. Under exceptional circumstances, the gold reserve may be reduced to 40%, and subject to the payment of a tax on the excess of 4% per annum for the first 6 months, 5% per annum for the next 6 months, and 10% per annum thereafter. Securities against which notes are issued must mature in or within 90 days. Notes are redeemable at sight.

The bank converts at its option either (a) in gold coin or bars at the rate of 20 sucres to the condor or (b) in sight drafts on New York or London, at a maximum rate of 4.10 sucres per dollar.

The bank may act as depositary, fiscal agent and trustee of the government, municipalities and public institutions in general. All collections of revenue are to be deposited with it forthwith and it shall be the duty of the bank to retain fortnightly, sufficient therefrom to meet the public debt service. Direct loans to the State and municipalities are prohibited and government bonds held as securities for loans to member banks or otherwise may not exceed 25% of its circulation. Loans of a larger maturity than 90 days are prohibited; unsecured loans must bear 3 signatures, including that of a member bank, or 2 signatures when secured by bills of lading, warehouse receipts and the like transferring title to the bank, and with a margin of 50% of security at the market value. It may not operate direct with the public, except in towns where there may be no other bank. Restrictions as to holding real estate or mortgages are provided. It shall be the duty of the bank to buy all gold (other than legal tender coin) and all discountable drafts on the principal foreign centers, offered to it. The bank shall act as a depositary for member banks and as a clearing house. The bank shall maintain a reserve, in gold or bills, of 50% against deposits; other banks, 15% against demand deposits, 5% on time deposits. The Central bank shall be a preferred creditor. After setting aside a reserve, dividends may be declared up to 12%, of the remaining profits, 50% accrues to the Government, the other 50% to increase its currency reserve. The bank is to assume liability for legal note issue of existing banks, receiving the equivalent thereof in gold, credits, against the State, and commercial paper duly endorsed. Modified by Resolution October 19, to the effect that the trans-

fer of gold by the present banks to the new bank shall be at the rate of 15 sucres to the condor.

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The Gaceta Judicial (of the Supreme Court) continued in 1924 and 1925, the publication of the Supreme Court's digest of cases in which there had been dissenting opinions.

Jurisprudence

Miranda vs. *Rueda,* Supreme Court (Gaceta Judicial XXIII, 4th Ser. No. 134, July 28, 1924). Failure to protest a bill of exchange for non-payment is not a bar to summary action by the holder against the acceptor.

Ordoñez Davila, Supreme Court (Gaceta Judicial XXIV, 4th Ser. No. 161, June 20, 1925). Proceedings for divorce by mutual consent. The parties were married by a religious ceremony in 1897. The law of Civil Marriage and Divorce passed in 1902 provided that only civil marriages shall have any civil effects; the court of second instance accordingly held that the divorce law of 1902 was not applicable. This was overruled by the Supreme Court, which held it was the intent of the law of 1902 to apply, as far as its divorce provisions were concerned, to all marriages whether entered into under the old law, or in accordance with the Civil Marriage law.

P. J. E.

Guatemala

Law on Credit Institutions. On February 23rd, 1925, the President of Guatemala signed Decree No. 890 by which the Credit Institutions of the country are to be governed. These institutions are the following: (1) The Central Bank of Guatemala and other banks of emission; (2) Hypothecary Banks; (3) Banks and banking houses which receive deposits; (4) Agricultural Banks; (5) Savings Banks; (6) Warehouses which make loans on goods and merchandise deposited therein; (7) Foreign Banks and Banking Houses. (El Guatemalteco, February 24th, 1925). Legislative Decree No. 1406 of May 28th, 1925, approves, with modifications, Decree No. 890 (El Guatemalteco, June 18th, 1925.)

Law of Pharmacy and Drug Stores. On May 19th, 1925, the Legislative Assembly approved a law which the President promulgated on June 1st and which prescribed a set of regulations for the exercise of the profession of pharmacist, for establishing pharmacies, for dealing in drugs and herbs, as well as for the issuance and sale of medicines. (El Guatemalteco, July 2nd, 1925.)

Conventional Arrangement Between El Salvador and Guatemala for Facilitating Transit by Land Between the Two Countries. The Convention for Facilitating Transit by Land between El Salvador and Guatemala, which was agreed upon through the exchange of diplomatic notes, was declared effective June 15th, 1925.

Convention for the Protection of Trade Marks. This convention, which was signed at the Fifth Pan American Conference, held at Santiago, Chile, on April 28th, 1923, was approved on April 24th, 1925, and promulgated by the President of the Republic on May 6th, 1925. (El Guatemalteco, June 27th, 1925.)

Universal Postal Convention. On June 2nd, 1925, the President of the Republic authorized the Consul General of Guatemala in Stockholm to sign, as the representative of Guatemala, the Universal Postal Convention and the Arrangement Concerning Parcels Post which was drawn up in that City in the month of August, 1924. (El Guatemalteco, June 5th, 1925.)

New Bureau in Department of Fomento. A National Department of Labor in the Secretariat of Fomento is established by Decree No. 909 of December 5th, 1925, published in El Guatemalteco of the same date, the duties of which are: (a) to intervene amicably in the settlement of disagreements which arise between employers and employees; (b) to organize and create commissions of conciliation and arbitration; (c) to see that proper observance and compliance are given to the laws, regulations and resolutions intended to harmonize the relations between employees and employers, or which may put an end to the differences arising between them; (d) to bring about an amicable settlement in questions which may arise by reason of accidents happening to employees during employment in accordance with the laws; (e) to watch over and inspect the hygienic conditions and conditions of personal safety of employees in mercantile and industrial establishments: (f) to organize and look after the statistical and registrational services which may be established for the better discharge of its duties; and (g) to formulate and propose the necessary legislations regarding the organization of labor in its different manifestations as regards the proletariat.

The personnel of the National Department of Labor is to be named by the Executive and is to be composed of a salaried director and secretary, six honorary members and the Attorney General of the Nation. (El Guatemalteco, December 5th, 1925.)

Law of Forestry. In Decree 1364 of March 28th, 1925, published in El Guatemalteco of April 8th, 1925, is contained the Law of Forestry, dealing with the fomentation and exploitation of the national forestry resources.

Seventy-five Percent of Personnel to Be Guatemalan. By Decree 1367 of April 27, 1925, it is provided that the personnel of every person or company engaged in industry and agriculture must be at least 75% Guatemalan. Exception is made in the case of employments for which a special degree or license is required, provided such employments are not regulated by law, in which case Guatemalans are to be preferred. (El Guatemalteco, April 30th, 1925.)

Archeological, Ethnological, and historical Objects and objects of ancient art found in Guatemala, are declared by Decree, No. 1376 of May 7th, 1925, to belong to the State, and a Bureau of Archeology, Ethnology and History, together with a National Museum, is created and placed under the Department of Public Education. (El Guatemalteco, May 13th, 1925.)

Married Women's Rights. Decree No. 1371 of May 8th, 1925, provides that a married woman of legal age is free to appear judicially. In suits against her husband the latter is bound to furnish her with the necessary resources. She does not

have to have her husband's consent to make contracts with respect to her own property, nor to engage in industry or business, nor to enter into any kind of a contract. Real property acquired during the marriage in the nature of community property must be deeded and registered in favor of both spouses, and cannot be sold or mortgaged without the consent of both. (El Guatemalteco, May 14th, 1925.)

Changes in Law of Hydrocarbons. Article 14 of the Law of Hydrocarbons was amended by Decree No. 893 of June 11th, 1925,, (El Guatemalteco, June 13th, 1925), and by Decree No. 902, published in El Guatemalteco of August 24th, 1925. This Article now reads as follows: "If the applicant should be a foreigner, he must state in a definite manner that in everything which refers to this class of undertakings he subjects himself to the law of the country as if he were a Guatemalan, and that in no case will he resort to diplomatic intervention. He must, in addition, in order to obtain, whether directly from the government or by transfer, a license to explore, or to enter into a contract of exploitation, prove that the laws of his country do not deny to Guatemalans the same facilities as those which this law contains. If these conditions are not complied with by foreign petitioners, they shall not be admitted even as shareholders in the Companies which may have obtained licenses or contracts to explore and exploit."

Ratification of Central American Conventions. The following treaties, conventions, etc., signed in Washington on January 7th, 1923, at the Conference on Central American Affairs were ratified by Guatemala as follows:

Convention for the Establishment of Stations for Agricultural and Industrial Experiments; Convention for Unification of Protective Laws for Workmen and Laborers; Convention for the Reciprocal Exchange of Central American Students; Convention for the Establishment of Free Trade and Extradition Convention, May 14th, 1925. (El Guatemalteco, July 3rd, 1925.)

Convention for the Establishment of an International Central American Tribunal, with Protocol, and Declaration to the effect that the Spanish text of the treaties concluded between the Republics of Central America at the Conference on Central American Affairs is the only authoritative text; Convention for the Establishment of Permanent Central American Commissions; Convention on the Practice of the Liberal Professions; May 27th, 1925. (El Guatemalteco, July 10th and July 14th, 1925.)

Convention relative to the Preparation of Projects of Electoral Legislation, July 18th, 1925. (El Guatemalteco, July 31, 1925.)

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Honduras

Ratification of Central American Conventions. On February 17th, 1925, the National Congress of Honduras ratified the following conventions:

Convention for the Establishment of an International Central American Tribunal. (La Gaceta, June 16th, 1925.) (Notwithstading that this convention was rejected by El Salvador, it now becomes effective since it has been ratified by Nicaragua, Honduras and Costa Rica.)

Convention for the Limitation of Armaments. (La Gaceta, July 2nd, 1925.) (This convention has now been ratified by the five Central American States and is therefore in force.)

Convention for the Establishment of International Commissions of Inquiry. (La Gaceta, July 1st, 1925.) (This convention has now been ratified by the United States, Costa Rica, Nicaragua, Guatemala, and Honduras.)

On March 2nd, 1925, the National Congress of Honduras ratified in Tegucigalpa the General Treaty of Peace and Amity. (La Gaceta, June 8th, 1925.)

The following Conventions were approved by the National Congress as follows:

Convention for the Establishment of Permanent Central American Commissions, approved by Congress on March 10, 1925, and signed by the President on March 15, 1925. La Gaceta, July 9, 1925.)

Convention for the Unification of Protective Laws for Workmen and Laborers, approved by Congress March 20, 1925, and signed by the President March 23, 1925. (La Gaceta, July 23, 1925.)

Convention for the Establishment of Stations for Agricultural and Industrial Experiments, approved by Congress on March 24, 1925, and signed by the President March 25, 1925. (La Gaceta, July 25, 1925.)

Convention for the Reciprocal Exchange of Central American Students, approved by Congress March 24, 1925, and signed by the President March 25, 1925. (La Gaceta, July 28, 1925.)

The Declaration to the effect that the Spanish text of the treaties concluded between the Central American Republics at the Conference on Central American Affairs is the only authoritative text, was approved by the National Congress on March 24, 1925, and signed by the President March 25, 1925. (La Gaceta, July 29, 1925.)

W. J.

Nicaragua

Laws

1. *Aerial Mail Service.* A law, promulgated February 23, approved a contract for the carrying of aerial mail, especially between the capital city of Managua and the city of Bluefields on the Atlantic Coast.

2. *Protection of Public Health.* A law, promulgated March 27, provided for the organization and direction of a sanitary service, to be in charge of a national department of public health under the Minister of Police.

3. *Sanitary Contract.* A law, promulgated

April 20, approved a contract for paving, sewerage, and water works in Managua.

Decrees

1. *Decree of Amnesty.* A legislative decree, No. 8, approved January 9, granted full and unconditional amnesty to all Nicaraguans who had committed political offenses, provided they were not guilty of assassination or homicide.

2. *Export Tax on Cattle.* Legislative Decree No. 20, approved April 3, placed an export tax of one-fifth of a cordoba per head on cattle exported from or by way of the Department of Rivas to Costa Rica.

3. *National Guard.* In order to comply with Article two of the Convention for the Limitation of Armaments, celebrated in Washington, February 7, 1923, between the five Republics of Central America, by which the parties agreed to establish a National Guard to co-operate with the Army for the preservation of public order, a decree was approved May 15th for the establishment of such a Guard, to be free from all political influence and to maintain public order, with the triple character of urban, rural and judicial police.

Revolution

No additional legislation of importance has been enacted by Congress, due to General Emiliano Chamorro's wrongful seizure, through military force, of the Executive Power, his vicious forcing of the legitimate President's resignation, his unjust banishment and illegal impeachment and ouster of the Vice-President, contrary to the laws and constitution of Nicaragua, and his final unlawful assumption of the office of President of the Republic, all contrary to the public law of Nicaragua, and in direct violation of the Central American treaty of Peace of 1923, executed at Washington, and which General Chamorro himself signed as one of the delegates of Nicaragua at that conference.

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Ley sobre protección de la salud pública. Managua, Tip. Nacional, 1925. 26 p. 12°.

W. S. P.

Panama

Laws

1. *Shipping Law.* Law No. 8, of January 12, 1925, is a shipping law, providing the necessary legal steps for registration of ships, prohibiting their sale in time of war, except with permission of the Executive Power, who is authorized to issue a decree containing all the necessary provisions in regard to rules of navigation, providing for tonnage dues in international trade, and that ten percent of the crew be Panamanians.

2. *Law Concerning (Fideicomiso) Trust.* This Law, No. 9, of January 6, composed of 38 Articles, was the result of a very thorough study of the subject, made by the present able Minister of Panama in Washington, Señor Dr. Don Ricardo J. Alfaro, whose book on the subject, published in 1920, is one of the best studies written in the Spanish language. It was prepared by him for the purpose of showing the necessity and convenience of introducing into the legislation of Latin-American countries a new civil institution, similar to the trust in English law. It is a book of 93 pages, well written and prepared in a scholarly manner. The last few pages, containing a draft of a proposed trust law, was adopted by the Assembly as its final draft of the law.

The trust is little known in Latin-American countries, and this law was enacted due to the necessity for such a legal institution to meet the modern progressive development in Panama. It is meant to contain the essential principles of the English trust, and that, therefore, all acts or contracts that may be executed or entered into in the United States, especially with the intervention of banking and trust companies, may also be executed or entered into under the new Panaman law. The translation of Article 1 of the law is: "A fideicommissum is an irrevocable mandate whereby certain property is transferred to a person named the trustee (fiduciario) in order that he may dispose of it as directed by the party who transfers the property named the constituent (fideicomitente), for the benefit of a third party named the *cestui que trust* (fideicomisario)."

3. *Stamp Taxes.* Law No. 22, of February 3, relates to stamp taxes. It contains 44 Articles.

4. *Diplomatic and Consular Services.* Law No. 41, of March 3, composed of 83 Articles, relates to the diplomatic and consular services. It prescribes the grades of the diplomatic and consular representatives, their duties, rights, privileges and prerogatives.

5. *Immigration.* Law No. 55, of March 30, relates to the immigration of laborers.

6. *Election Laws.* Law No. 60, of March 31, comprising 32 pages and containing 207 Articles, relates to popular elections.

Reforms in Codes

Many changes in and additions to several of the Codes were made during the past year.

Those concerning the Fiscal Code, comprising 20 pages, may be found in Law No. 29, of February 11; those concerning the Judicial Code, comprising 64 pages, may be found in Law No. 52, of March 28th; those concerning the Administrative Code, comprising 12 Articles, may be found in Law No. 64, of April 2; and those concerning the Civil Code, comprising 41 pages, may be found in Law No. 43, of March 13.

This last code contains a new law concerning divorce, which is very liberal, even permitting it on the ground of the mutual consent of the parties.

Decree

A Presidential decree, No. 14, of June 8, provided regulations for the Mining Code and Law No. 8 of 1919. These regulations provide that concessions may not be granted free, or for more than two years, nor may two or more concessions in different sections be granted to the same individual or company. The entire regulation is published in the Gaceta Oficial of June 15th.

Amendments to Constitution

The President has given his approval to three amendments to the Constitution, to the first two on March 2 concerning popular suffrage and games of chance, and to the last on March 20th concerning the division of the Republic into provinces and municipalities.

Treaties and Conventions

The Treaty of Peace and Friendship, celebrated with Austria, September 10, 1919, was approved by

Law No. 16, of January 20; and that of Peace, celebrated with Hungary, June 4, 1920, was approved by Law No. 17, of January 20.

The Convention with France concerning traveling commercial agents was approved by Law No. 27, of February 6; and that concerning aerial navigation, celebrated in Paris, October 13, 1913, was approved by Law No. 15, of January 20.

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Sobre ceremonial diplomatico. Decreto número 14 de 1925 (de 3 de abril). Panama, Imprenta Nacional, 1925. 26 p. 12°.

W. S. P.

Peru

Legislation

1923: Law 4801 (Nov. 25, 1923. El Peruano II—6, July 8, 1925) amending Law No. 2219 re consular invoice charges.

1924: Law No. 4984 (Dec. 6: El Peruano No. I—5, Jan. 8, 1925) excerpts from the provisions of Art. 21 of the Mining Code, placers (lavaderos) of gold, wolfram and other analogous minerals in beds of rivers.

1925: Law No. 5006 (Jan. 16: El Peruano No. I—28, Feb. 4) requires account books to be in Spanish, under penalty of fine and inadmissibility in evidence.

Law No. 5049 (March 5: El Peruano I—64, March 21) Liquor Tax.

Laws No. 5066 (March 5: El Peruano I—69, March 31) and 5119 (June 15: El Peruano I—136, June 25) amending Law 4916 (Employees' Compensation).

Law No. 5072 (March 18: El Peruano I—70, April 1) imposes a surtax of 2% ad valorem on customs duties; 5% if by parcels post.

Law No. 5076 (March 23: El Peruano I—92, April 29) amends the Sugar Export tax law.

Law No. 5085 (April 18: El Peruano I—101, May 11) creates a State Match monopoly. Law No. 5211 (Oct. 14: El Peruano II—101, Nov. 4) approves the contract with the Swedish Match Co. (Svenska Tandsticks Arctiebolaget) for such monopoly.

Law 5152 (July 21: El Peruano II—21, July 25), sundry provisions re the Tacna-Arica plebiscite.

Law 5168 (July 31: El Peruano II—53, Sept. 7) creates a commission to revise draft of the Code of Criminal Procedure.

Law 5165 (July 27: El Peruano II—51, Sept. 4) amending the law as to the crime of treason.

Law 5167 (July 24: El Peruano, II—52, Sept. 25) amends Law of Jan. 2, 1889, as to restrictions on mortgage bank loans.

Law 5249 (Nov. 3: El Peruano II—121, Nov. 28) authorizes an external loan for $7,500,000.

Law 5226 (Oct. 22: El Peruano II—114, Nov. 19) amends the Mortgage Bank Law of Jan. 2, 1889.

Note: The official Gazette, El Peruano, in its issue of Dec. 26 (last examined) calls attention to the fact that 42 laws, various numbers ranging from 4964 to 5288, although promulgated, have not yet been published due to failure of the ministries to transmit them for publication.

P. J. E.

Salvador

Laws

1. *Real Estate and Mortgages.* A law, approved April 16, 1925, made certain amendments in the regulations concerning the registration of documents in the Registry of Immovable Property and Mortgages.

2. *Judicial Power.* A law, approved April 20, amended certain articles of the organic law of the judiciary.

3. *Military Penal Code and Procedure.* A law, approved March 25, reformed the military penal code and military procedure.

4. *Passports.* A law, approved May 16, promulgated rules for the issuance and visé of passports for nationals and foreigners, who may leave or enter the country. Special provisions are included in regard to the registration of Chinese, and the issuance of passports to them.

5. *Poll Tax Law.* On account of paving San Salvador city and its resulting benefits, and in order to assist in extending and maintaining urban and rural roads, a law was approved May 20, known as the "Road Service" Act. Generally speaking, all persons resident in the Republic, national or foreign, of eighteen years or more of age, are subject to the tax, which must be paid in money or in work. For this purpose the law provides a schedule, by which persons contribute according to their wealth, profession or salary. One worth from one to five thousand colones contributes three days; one worth more than a million colones contributes three hundred days; professional men contribute five days, and salaried employes from one and one-half to twenty days, according to their salary, ranging from one hundred to eight hundred colones per month.

However, a person may be freed from the necessity of working personally on the roads, by paying a colon for each day of work for which he is liable.

6. *Sanitation.* A law, approved May 20, provided for the sanitation of the capital, the enlargement and better distribution of the water supply and sewerage and the construction of pavement.

7. *Rates of Public Utility Companies.* A law, approved June 30, provided that companies, enterprises, or corporations, now or hereafter established, and which render public service, must submit for prior governmental approval such rates or changes of rates as they may put in force.

8. *Organic Consular Law.* On June 10 there was approved a law pertaining to the organization of the consular corps. It contains 8 chapters and 181 sections, dealing with the object and establishment of consulates, the appointment of consular officers, their rights, powers and obligations, their duties with reference to the persons and property of Salvadoreans, and the merchant marine, national property in their care, consular invoices, manifests and clearances, as well as consular fees.

9. *Bank of Issue.* A law approved May 28, amended two articles of the Law Relative to Banks of Issue. The amendment refers to the supervision of the balances of the banks.

Decrees

1. *Permanent Armed Force.* By decree of April 28, 1925, the National Legislative Assembly has lim-

ited the permanent armed force of Salvador to three thousand men for the year. This is twelve hundred less than what is permitted by the conventions for the limitation of armament, signed at Washington, February 7, 1923, in the final session of the Conference on Central American Affairs.

2. *Simplication of Customs Duties.* A Presidential decree of August 12, effective September 1, simplified customs duties and sur-taxes. This type of tax is to be known as the 40% tax on import duties and includes the original customs duties on importation plus the surtaxes in effect. The full decree is published in El Diario de la Prensa of San Salvador for August 14, 1925.

Treaties and Conventions

1. *League of Nations.* A law, promulgated April 24 approves an amendment, formulated by the Assembly of the League of Nations, concerning Article 16 of the Covenant of the League.

2. *Conventions in Regard to Uniformity of Nomenclature for the Classification of Goods and in Regard to Publication of Customs Documents.* These two conventions, which were adopted at the Fifth Pan American Conference, held at Santiago, Chile, in 1923, were ratified by the Assembly on March 7 and proclaimed May 15th.

3. *Ratification of Treaty and Conventions Entered into at the Central American Conference of 1923, Held at Washington.* On May 26 the President proclaimed the ratification of the General Treaty of Peace and Friendship, with certain modifications, as well as the Extradition Convention, both of which were entered into by the Five Central American States at the Washington Conference in 1923, but as to the Convention for the unification of the laws protecting workers and laborers, also signed at the same time, Congress refused to consent to its ratification, and added that its stipulations are accepted as a recommendation to be incorporated into the laws as necessities may require.

4. *Arbitration Treaty with Uruguay.* This was entered into November 7, 1924, and proclaimed May 28th. Article 1 is extremely liberal in that it provides for the parties submitting to judicial arbitration all controversies of whatever nature or for whatever cause that may arise between them, provided that they cannot be settled by direct negotiation. Nothing is said in the treaty in regard to excepting questions involving vital interest, national honor or independence.

5. *Conventional Arrangement Providing for Transit by Land Between Salvador and Guatemala.* By an exchange of diplomatic notes in May, provision was made concerning the transit of native passengers. They are not required to possess passports, may be permitted to carry arms, and are not required to pay visé fees on licenses, and a provision is made for surrender of fugitives from justice. W. S. P.

Venezuela

Constitution

A new Constitution was declared ratified on June 24, 1925 (Gaceta Oficial, Special No., July 1, 1925). The new Constitution in language maintains the federal principle, but the powers of the states are still further restricted, and those of the National Government correspondingly increased, than in the former Constitution (of 1922). The states retain all sovereignty not delegated in the Constitution (Art. 12). The states are subdivided into municipal districts locally autonomous and independent as to local administration, of the political power of the state; such administration being subject, however, to the Federal Executive in case of foreign or civil war (Art. 14). In addition to the powers of the federal government as known in the United States, the states are deprived of jurisdiction as to legislation in civil, commercial, penal and procedural matters, banking, conservation of natural resources, sanitation, public registry, condemnation for a public use, education; are deprived of all military powers or control over navigation (including aerial), posts, telegraph, telephone, wireless, railroads; new limitations on their taxing powers are imposed, some former state revenues now being allotted to the nation (Arts. 15-17). Export taxes are prohibited (Art. 15, par. 14). The states and the municipalities are prohibited from contracting foreign loans (Art. 24). The bill of rights, or constitutional guaranties, is ample, including prohibition of capital punishment or of imprisonment for more than 20 years (Art. 32). The term of the President is seven years (Art. 54). Congress is composed of a senate and chamber of deputies (Art. 55). Two senators are elected from each state by the Legislature (Art. 60). Deputies are elected by direct vote, one for each 35,000, or excess of 15,000, population (Art. 56). Congress meets annually on April 19th (Art. 63). The provision of the former Constitution is retained that a law which amends another must be redrafted in full and the entire former law repealed (Art. 86). Treaties must contain an arbitration clause (Art. 100, subd. 20). The cabinet officers have a right to take part in congressional debates (Art. 110). The Supreme Court is expressly given power to pass on the constitutionality of national or state laws (Art. 120, subd. 9).

Pursuant to Presidential Decree of July 1, 1925 (Gaceta Oficial, No. 15027, July 1st), until the states shall have been constitutionally reorganized in conformity with the new Constitution, they are each to be governed provisionally by a State President, appointed by the Federal Executive. The state judges and other state officials are to be appointed by the State President. Until new state constitutions are adopted, the old constitutions continue in force in so far as not in conflict with the new national constitution or this degree.

Legislation, 1925

June 3, 1925: Budget for fiscal year 1925-6. Gaceta Oficial Extraordinary No., June 23, 1925.

June 10, 1925: Law of military and civil pensions. Gaceta Oficial No. 15628, July 2, 1925.

June 10, 1925: Law approving the treaty to prevent international conflicts, adopted at the 5th Pan American Conference, May 3, 1923, at Santiago, Chile. Gaceta Oficial No. 1563, Sept. 7, 1925.

July 17, 1925: (Gaceta Oficial Special No., July 18). *Mining Law,* amending the law of June 2, 1922. Mining concessions are now granted by the Federal Executive, without requiring the approval of Congress Arts. 11, 12). Consent of the Government is not required for transfer or lease of concessions, notice to the Department of Fomento sufficing (Arts. 13, 14). The miner is entitled to expropriate the surface (Art. 18). The concessionaire, if not domiciled in Venezuela, must maintain an attorney therein (Art. 26). Foreigners, except foreign states or governments, may acquire mines (Arts. 29, 30). Area of lode mines is

up to 500 hectares, placers, 2,500 hectares (Arts. 37, 38). Title is acquired by denouncement, survey, and issuance of the title by the Department of Fomento (Arts. 156 seq.). Necessary easements and water rights are granted to the mine operator (Art. 61, seq. 94). Surface taxes range from 50 centimes to 2 Bs. annually per hectare; normal exploitation taxes are three per cent of the gross products (Arts. 85, 86). Machinery, etc., is exempt from import duties (Art. 91). Mining companies are organized under the formalities of the commercial code, but are regarded as civil, not commercial, in character (Art. 106). Foreign companies must comply with the requirements of the commercial code and are deemed domiciled either at the location of the mine or in Caracas, if their attorney is domiciled therein (Art. 107). Claims arising out of operations in Venezuela are a first charge against the property and rights of foreign companies (Art. 108). Concessions may be mortgaged, but taxes are a prior lien (Art. 109). Prospecting may be carried on in public lands without any formality other than notice to the local authorities (Art. 135). Permits for exclusive exploration of areas not more than 5,000 hectares, in public or in private land, may be granted by the Department of Fomento, for a term normally of 2 years, in special cases up to 10 years (Arts. 136, 138, 146), the annual tax being either 125 or 250 Bs. per 1,000 hectares (Art. 88). Old concessions may be adapted to the present law, within 6 months, by notice to the Department (*227*).

July 19, 1925: (Gaceta Oficial No. 15673, August 26). Organic Law of the Federal Courts, repealing law of July 13, 1923. The Supreme Court (Corte Federal de Casación) is divided into three parts, the Federal part, the appeals or cassation part, and the Political and Administrative part, which passes *inter alia* on the constitutionality of national and state laws (Art. 13, par. 4).

July 20, 1925: (Gaceta Oficial Special No., August 28). Law of Public Registry, repealing the law of June 30, 1915. There is a principal registry office in the Federal District and in each state, and a subordinate registry office at the seat of each department of the federal district and of each district and in the federal territories. The subordinate registries keep 4 protocols in duplicate: 1: for documents transmitting, limiting or encumbering property; for contracts or other acts affecting title to real or personal property or the right of usufruct or emphyteusis; use, habitation or easements, mortgage or antichresis; leases; partnerships or companies, bonds, etc., relating to federal revenues; denouncements, concessions, titles, etc., under the mining and oil law; options; and complaints to interrupt the running of the statute of limitations. 2: for marriage settlements; separation agreements and decrees; adoption and emancipation; recognition of illegitimate children and other acts and instruments affecting family relations. 3: for powers of attorney and commercial matters, and contracts and acts requiring registry under the commercial code and all other instruments and decisions for which no other protocol is provided; and 4: for wills and all matters affecting decedents' estates (Art. 51). Indices are required to be kept (Art 55 seq.), also a Diary, a Blotter, Libers for injunctions and attachments, for encumbrances (in 4 sections: mortgage and antichresis; sales with provision for resale (*ventas sub-retro*); emphyteusis and ground rents (*censos*) and limitations on property, i. e., usufruct, use, habitation, homestead and easements) (Arts. 55-63, 73). Documents to be registered must be on stamped paper and not typewritten; if executed abroad, a certified copy is protocolized, a memorandum of registry being stamped on the original (Art. *72*). Where registry fees are dependent on the value of the transaction, the normal fee is one-quarter of one per cent (Art. 98). The law went into effect October 1, 1925.

July 23, 1925: Law on the exercise of the professions of engineer, architect and surveyor. Gaceta Oficial 15668, August 20, 1925. The exercise of these professions by a person not inscribed in the College of Engineers of Venezuela is prohibited.

July 24, 1925: (Gaceta Oficial, Special No., August 18). Law of Public and Municipal Lands (*Tierras Baldias y Ejidos*), repealing law of June 20, 1924. Pursuant to the new Constitution, public lands owned by the states are nevertheless administered by the nation (Art. 2). A census of public lands is ordered (Arts. 5 seq.). Action is authorized to recover public lands illegally held, except where possession is claimed prior to 1848, and in any case the statute of limitation is a defense (Arts. 9-11). Certain public lands are inalienable, such as those forests which are necessary for the conservation of water supply, those containing valuable national products e. g., rubber, resins, etc.) within 2½ kilometers of the sea or navigable waters and lands situated on islands (Art. 12). The Federal Executive may temporarily reserve zones for later colonization (Art. 14). Public lands not declared inalienable can be sold or acquired as homesteads (Art. 15, 55 seq.). The administration of public lands is in charge of the Department of *Fomento* and subordinate *Intendentes* and sub-intendentes of public lands (Art. 18 seq.). Foreigners as well as natives may acquire public lands, but no foreign government may do so under penalty of forfeiture (Arts. 21, 23). Grants are limited to any one person during a period of five years, of a maximum area of 500 hectares for agricultural land, 5,000 hectares for grazing, except at the discretion of the Executive in special cases or when already fenced or cultivated (Arts. 25, 26). The sale price is to be determined by appraisal, but to be not less than 10 bolivares per hectare of first class land, 5 Bs. of second class agricultural land or 2 Bs. for first class, 1 B. for second class, grazing land (Art. 30). The procedure for sales and homesteads is set forth in detail in the law. Lands may be granted gratis to municipalities for common lands (*ejidos*) up to a maximum of 2,500 hectares (Art. 66 seq.). Leases are authorized for terms not to exceed 15 years Art. 69 seq.). Occupancy of public lands, without sale or lease, is lawful and occupants and lessees are given preferential rights to acquire by adjudication (Art. 84, seq. 116) and if such rights are not exercised, occupants' possession may not be disturbed by an adjudicatory or lessee for five years (Art. 91).

July 31, 1925: Organic Law of the Consular Service. Gaceta Oficial, No. 15656, August 5, 1925, repealing the law of July 15, 1923. Arts 34-50 deal with the duties of consuls in regard to decedents' estates.

Oil Law (July 18: Gaceta Oficial Special No.). The coal and oil industry is declared of public utility (Art. 1). Right of exploration and exploitation is granted by concessions from the Federal Executive, without need, as heretofore, of congressional action (Art. 4). Foreigners and foreign corporations duly domiciled in Venezuela have the same rights as nationals (Art. 5). Exploration lots are limited to 10,000

hectares; exploitation lots to 500 hectares, except in navigable waters, when the limit is 10,000 hectares (Art. 6). Concessions are valid from date of publication in the Official Gazette (Art. 7). Exploration concessions are obtained by petition to the Minister of Fomento, give an exclusive right for 3 years to explore, and to select one-half of the area in alternate lots up to 500 hectares each for exploitation (Arts. 10-16); the free spaces become national reserves, for which special procedure obtains Arts. 14, 20, seq.). Exploitation certificates or concessions are good for 40 years (Art. 22) and carry essential easements (idem 44 seq.). Separate concessions may also be granted for manufacturing and refining and for common-carrier pipe-lines and other means of transportation (Arts. 6, 24-32). Normal taxes are: exploration, 10 centimes of a bolivar per hectare; exploitation taxes are: initial, 1 bolivar for coal, 2 Bs. for oil, per hectare; annual surface tax per hectare, for coal, 1 B. for first 3 years, 2 Bs. thereafter; for oil, 2 Bs. for first 3 years; 4 Bs. for next 27 years, and 25 Bs. for last 10 years and ten per cent in cash (or, at the option of the Executive, in crude product) of the value of the product at port of shipments (Arts. 33, 34). Reductions are allowed in certain cases (Art. 42). Machinery, etc., is exempt from import duties (Art. 48). Assignment of concessions may be made by notice to the Department of Fomento, previous Executive consent being necessary only when the assignee already possesses tracts amounting to 300,000 hectares for exploration or 150,000 hectares for exploitation. An assignment to a company not legally domiciled in Venezuela is void (Arts. 54-58). Concessionaires under former laws have the right at their option within one year to adapt their concessions to the present law (Art. 81). This new law went into effect forthwith on promulgation, repealing the Oil Law of June 9, 1922 (Art 96). A translation into English has been published by N. Veloz Goiticoa, Caracas.

Law of Aliens (July 23: Gaceta Oficial, August 25). The territory of Venezuela is open to all aliens and they enjoy in general the same civil rights as Venezuelans (Arts. 1, 2). An alien arriving in Venezuela is required to present himself before the authorities within 15 days, furnish proof of identity and state whether he intends to remain and his occupation (Art. 5); special provision in regard to clergymen (Art. 6). Strict political neutrality is enjoined, under sanction of being considered pernicious and expelled (Arts. 8, 9). Copies of newspapers published by aliens must be sent to the authorities; publishers thereof must guarantee especially that they will not violate political neutrality (Art. 10). In addition to the grounds set forth in the Immigration Law, numerous other grounds for exclusion are provided by this law, *inter alia* aliens whose presence may disturb internal public order or compromise international relations, who have committed a crime, who are without means of support, anarchists, those suffering from disease, and in general, any alien whom the President does not consider admissible (Art. 13). Procedure for expulsion and declaration of inadmissibility (Art. 16 seq.) is provided for pernicious aliens; from the President's decree there is no appeal (Art. 26), unless the person to be expelled claims Venezuelan citizenship (Art. 27). Foreign nations may not acquire real property, except for legations (Art. 35). Procedure is established for claims by foreigners against the nation, which must be followed, otherwise no claim lies (Art. 36). Aliens are debarred from diplomatic claims, except after exhausting legal resources and denial of justice (Art. 37). The right to damages which the legitimately constituted authorities may cause in time of war, while operating in their public character, is expressly recognized (Art. 39), but no claim is allowed against the Government for damages by agents or armed bodies in the service of any revolution but only against the individual tortfeasors (Art. 40). Claim must be prosecuted in the Federal Court of Cassation, unless settled administratively (Art. 42). Violation of political neutrality is a defense against a claim (Art. 48). The statute of limitation is 10 years (Art. 50). The law of Aliens of July 10, 1923, is repealed.

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P. J. E.

Mexico

Since our review of a year ago there has been considerable legislative activity in Mexico, some by Laws of the National Congress, more through Presidential Decree, under the "extraordinary powers in matters of finance" with which the Executive has been invested through "temporary" laws frequently renewed since 1916. An important part of this legislation has been in execution of the more advanced provisions of the Constitution of 1917, particularly of Article 27, in the highly important matters of mining laws and the much debated subsoil rights as relates to petroleum, matters of great international interest and significance. In their chronological order the principal new laws coming more or less within the purview of comparative legislation follow:

Presidential Decree, March 31, 1925 (Diario Oficial, April 2, amended by Decree of August 29, 1925, D. O. Aug. 31), determining the persons who are subject to the payment of income taxes, with provisions for its collection, provides with respect to the persons subject to the tax: 1. Mexicans domiciled within or without the Republic, upon their profits or receipts, whatever may be their source. 2. Foreigners domiciled within or without the Republic, upon their receipts or profits derived from sources of wealth situated or from business conducted within the national territory. 3. Civil or mercantile societies, associations, endowments, joint-estates or properties owned in common, inheritances, and in general, corporations in the same cases as individuals in the preceding sections. Exemptions are from 2,000 to $2,500 (Pesos), and the rate of tax is from 1% to 4%, the latter on amounts of $45,000 (Pesos) and greater.

Law (by Executive Decree), March 31, 1925 (D. O. April 6, amended by Decree of August 24, 1925, D. O. Aug. 31), follows the practice of all but four of the United States in imposing on the sale of gasoline consumed within the country; but this tax is "paid at the source" by the producer or importer making sales at first hand. The tax is 3 cents per liter (about 12 centavos or 6 cents a gallon); it is payable in cash, and the proceeds are to be devoted exclusively to the construction, upkeep and improvement of national highways or roads.

Law (Executive Decree), March 21, 1925 (D. O. April 8), provides for the organization in the Re-

public, and for the operation there of national and foreign corporations engaged in the making of surety bonds, and prescribes the form of local charters and of domestication of foreign bonding companies, and the minimum of their capital.

Decree of March 26, 1925 (D. O. April 11), promulgates and publishes the Conventions of the International Union for the Protection of Industrial Property (Patents and Trademarks), signed in Paris on March 20, 1883, and revised in Brussels December 14, 1900, and in Washington June 2, 1911, together with the Madrid Convention for the international registration of trade and commercial marks, signed April 14, 1891, and revised as above indicated.

Decree of June 10, 1925 (D. O. June 19) promulgates and publishes the Treaty of Commerce and Navigation between Mexico and Japan, signed October 8, 1924. Nationals of each country are granted "complete liberty, with their families, to enter and to remain at any place within the territories of the other party," with full rights to acquire and own and lease real and personal property, engage in any kinds of lawful business, and dispose of property by sale, marriage, testament, and in all other ways.

Law (Exective Decree) of August 28, 1925 (D. O. August 31), creates the "Bank of Mexico" as a private corporation with minimum capital of $100,000,000 gold, of which the Mexican Government shall own at all times at least 51% of the capital stock, with power to issue circulating notes or bills of voluntary acceptance.

Decree of August 14, 1925 (D. O. Sept. 2), promulgates and publishes the International Pure Food Convention, signed in Paris on October 16, 1912.

Law (Executive Decree) of August 17, 1925 (D. O. Aug. 19), creates a liberal system of Civil Service Retirement Pensions.

Law (by Congress) of October 5, 1925 (D. O. Oct. 14), declares the late President Francisco I. Madero to be "Benemérito de la Patria" (Well-deserving of the Country), and decrees that his name in letters of gold shall be affixed in the Hall of Sessions of the Congress of the Union.

Decree of November 7, 1925 (D. O. Nov. 20); prescribes the Regulations of the Law of July 31, 1925, creating the Special Claims Commission.

Law, by National Congress, of December 26, 1925 (D. O. Dec. 31), is the long-expected and much debated "Law Reglamentary of Article 27 of the Constitution, relating to Petroleum," of the new "Oil Law" of the Mexican Republic, and which confirms the national ownership and dominion over certain subsoil substances. As this law is of great importance and because of public interest in its bearing on what are termed foreign "vested interests," some of its principal Articles may be exhibited in accurate translation.

"Art. I. The direct dominion (ownership) of every natural mixture of carbonates of hydrogen (carburos de hidrógeno) which are found in their original beds (yacimiento) in whatever physical state it may be, belongs to the Nation. The word "Petroleum" as used in this law includes all natural mixtures of hydrocarbonates which compose it, accompany it or are derived from it.

"Art. II. The direct dominion of the Nation to which the preceding Article refers, is inalienable and not subject to prescription, and only by the express authorization of the Federal Executive, granted in accordance with the terms of the present law and its Regulations, can the workings required by the petroleum industry be undertaken and carried out.

"Art. III. The petroleum industry is of public utility; therefore, it shall enjoy preference over every other use of the surface of the land, and the surface may be expropriated, taken and occupied, upon the proper legal indemnization, whenever required for the needs of this industry. The petroleum industry embraces: the discovery, the recovery, the transportation by pipe lines, and the refining of petroleum.

"Art. IV. Mexicans, and civil and commercial companies organized according to Mexican laws, may obtain petroleum concessions, upon complying with the requirements of this law. Foreigners, in addition to the foregoing obligation, must first comply with the provisions of Article 27 of the Political Constitution now in effect.

"Art. V. Rights derived from concessions granted in accordance with this law, shall not be transferred in whole or in part to foreign governments or sovereigns, nor shall these be admitted as partners or associates, nor shall any right therein be constituted in their favor.

"Art. VI. Everything relative to the petroleum industry is of exclusive Federal jurisdiction."

The remainder of the 22 Articles of the Law treat in much detail the mode and procedure for acquiring concessions, the conduct of the industry, the payment of the taxes, and the circumstances under which concessions are forfeited and lost.

Law of Congress, December 31, 1925 (D. O. Dec. 31, supp.), renews the "extraordinary powers of the Executive in matters of finance" until August 31, 1926.

Law of Congress, of December 31, 1925 (D. O. Dec. 31, supp.), is the Law of taxes and revenue of the Federal Treasury for the year 1926.

Law of Congress, of December 30, 1925 (D. O. Jan. 9, 1926), is the "Organic Law of Art. 4 of the Constitution, with respect to the Freedom of Labor." Art. 2 provides, "no person can be restrained from the profession, industry, commerce or labor which he sees fit, the same being lawful." Art. 3, "By lawful labor is intended, for the purposes of this law, that which is performed without attacking the rights of third persons and without offending the rights of society." Art. 4: "The rights of third persons are attacked, besides in the cases provided by other laws, in the following cases: 1. When a laborer has been displaced, it is attempted to put another in his place or without justification another has been put in his place, without the case having been decided by the Board of Conciliation and Arbitration; 2. When a laborer has been displaced from his position on account of sickness, by reason of *force majeur* or by permission, and the right is denied him of occupying the same position when he returns again for it." All such cases must be submitted to and decided by the Boards of Conciliation and Arbitration, under Art. 5.

"Art. 6. The rights of society are offended, besides in the cases provided by other laws, in the following cases: 1. When a strike has been declared in accordance with the terms of Art. 123, section 18 of the Constitution, it is attempted to put others, or others are put, in the place of strikers without the conflict out of which the strike arose having been settled; 2. When a strike has been declared in a like lawful manner by the majority of the workers in an establishment, the minority tries to return to work or to continue working." "Art. 7. The administrative

authorities provided by the Constitution, shall immediately upon the petition of any interested party, prevent the rights of society from being offended in the manner described in Art. 6."

Law of Congress, of January 15, 1926 (D. O. Jan. 21), authorizes the Executive to issue a Law amendatory of the Immigration Law of Dec. 22, 1908.

Law of Congress, of Jan. 15, 1926 (D. O. Jan. 21) is the "Organic Law of Sec. 1 of Art. 27 of the Constitution," relating to Foreigners and their rights in Mexico. This is another very important piece of legislation of far-reaching effects; its chief provisions are textually as follows:

"Art. 1. No foreigner shall acquire direct ownership (*el dominio directo*) of lands and waters within a strip of 100 kilometers (62 miles) wide along the frontiers, and of 50 along the seashore, nor be a member of Mexican Companies which acquire such ownership within the said strip.

"Art. 2. In order that a foreigner may form part of a Mexican Company which has or may acquire the ownership of lands, waters and their accessions, or concessions for operating mines, waters or combustible minerals within the territory of the Republic, he must comply with the requirements of Sec. 1 of Art. 27 of the Constitution, to wit: to enter into an agreement before the Department of Foreign Relations to be regarded as a national with respect to his share in the property of the Company, and therefore, not to invoke the protection of his Government with respect to it, under the penalty, if he defaults in his agreement, to forfeit to the Nation the property which he acquired or might acquire as a member of such Company."

Other Articles may be summarized: Such permission cannot be granted in the case of Companies holding agricultural lands in cases where 50% or more of the total interest in the Company would be in the hands of foreigners. Foreigners holding such 50% or more of interest before this law takes effect, may retain them, if individuals, until death, or for ten years if a Company or moral person; this limitation not to apply to colonization contracts made previously to the law; and other rights acquired by foreigners before the law may be retained by the actual owners until death. In case of acquisition by inheritance, the foreigner may obtain permit from the Ministry of Foreign Relations for its sale and conveyance, within the period of five years.

Law of Congress, of Jan. 16, 1926 (D. O. Jan. 30), authorizes the Executive to issue amended Codes, Civil, Commercial and Penal, and their respective Codes of Procedure, the same to be finished by November 30, 1926, and reported to Congress. This is a very important authorization, and may result in great changes in the present Codes, which have been in force since the '80s of the last century.

Law, by Executive Decree of Dec. 23, 1925 (D. O. Feb. 18, 1926) enacts lengthy and important Regulations of the Mining Tax Law.

J. W.

EUROPEAN LITERATURE AND LEGISLATION

Some Important Cases Decided Last Year in France—Fascist Régime in Italy Passes Laws in Furtherance of Its Policy of Discarding Old Social and Governmental Systems—Legislation Regarding Family Names in Scandinavia—Commercial Responsa in Those Countries—Proposed Swedish Code of 1923 Built Up on Two Theories—Bibliography of Recent German Legal Literature—Spain—Swiss Internal Legislation and Legal Bibliography

France

Court Decisions, 1925

Conflict of laws—application of the law of alien plaintiff's nationality to action in France to establish paternity.—Action was brought on behalf of a minor child of Italian nationality against a French subject to establish the alleged paternity of the child on the part of the defendant. The Italian law does not admit of such an action, subject to certain exceptions inapplicable here. *Held:* The action cannot be maintained, even under the French statute of 1912 permitting an action to establish paternity, since the statute is not "d'ordre public" (Cass., Jan. 20, 1925; Gaz. Pal., March 6, 1925).

The decision is of interest, not only as applying the well-known rule that the law of the party's nationality or domicile is determinative of questions of personal status, but as holding that a statute such as the one relied upon is not deemed declaratory of a sufficiently strong public policy to override the general rule of law.

Conflict of laws—Divorce—foreign law of alien dependant's nationality inapplicable. A woman, French by birth, became an Italian citizen by marriage to an Italian citizen. Subsequently the woman was restored to French citizenship by appropriate proceedings in France, "reintegration dans la nationalité française." She thereupon brought an action for divorce against her Italian husband, who objected that as divorce was not permitted under Italian law the action would not be. *Held* for the plaintiff, who, restored to full rights as a French citizen, could claim all rights allowed by French law; the defendant never acquired right of indissolubility of marriage (Cass., Feb. 13, 1925; Gaz. Pal., June 15, 1925).

Cf. Hague Convention of 1902, denounced by France in 1913 (Cass., July 6, 1922; Gaz. Pal., 1922, 2.533).

Conflict of laws—domicile of parties—(1) divorce—(2) transitory action between aliens. (1) The husband brought an action for divorce against his wife in the French courts, both parties being American citizens. It appeared that a separation action was then

pending in the courts of New York wherein the wife was plaintiff. *Held,* that though the husband had a domicile (residence?) in France, since he could file a cross suit for divorce in the pending action in New York, the French court was therefore without jurisdiction over the action.

The decision applies the rule that French courts cannot take jurisdiction of suits between aliens touching questions of status, unless the defendant has a domicile in France, has abandoned his domicile in his own country, and no other court can take jurisdiction (Paris, Dec. 24, 1924; Gaz. Pal., Feb. 27, 1925).

(2) A Russian subject drew two bills of exchange in Russia payable to another Russian. The defendant, a refugee, was found to have lost his domicile in Russia existing at the time the obligations were created and to have acquired a domicile in France. *Held,* that the French court had jurisdiction of the action, since defendant had lost his domicile abroad and acquired one in France (Trib. Civ. de Pont-l'Évêque, Dec. 17, 1924; Gaz. Pal., Feb. 27, 1925).

The decision applies the same rule, set forth in the case supra (1), to a converse situation.

Conflict of laws—Matrimonial régime applicable—French subject marrying in Germany and there domiciled. A French subject domiciled in Strasbourg married there in 1883 a German woman also domiciled in that city. The husband later became a German citizen himself and the spouse continued to reside there. In 1900 the German civil code was made applicable to Alsace. This code permitted persons already married to modify their existing marriage contracts touching property. The French Civil Code does not permit such modification. In April, 1921, before the French Civil Code was made applicable to Alsace-Lorraine, the husband and wife, who had become French subjects under the Treaty of Versailles, modified their original marriage contract. In July, 1921, a statute was passed in France permitting one domiciled in Alsace-Lorraine to choose any one of the several matrimonial régimes provided by French law. Thereafter, in 1924, the spouses made a third agreement again modifying their matrimonial régime by adopting that of community of all property under French law. In January, 1925, the French Civil Code was made applicable to Alsace-Lorraine, thus impliedly repealing the statute of April, 1921. In an action between the son and widow of the husband, it was *held:* that the matrimonial régime of the spouses is to be determined by the law of their domicile, rather than by the law of the husband's nationality, consequently their régime was to be determined by German law under which it was open to the spouses to modify the marriage contract at any time up to the moment when the German law applicable to Alsace was replaced by the French Code. Trib. Civ. de Strasbourg, March 27, 1925; (Gaz. Pal., June 8, 1925).

Contracts—Covenant not to engage in similar occupation—limitations. A covenant in an employe's contract of hire forbade him to engage for a period of ten years in any similar business, under penalty of damages. The employe left his employer and did engage in a competing business. *Held,* the former employer could recover substantial damages from the former employe for breach of the covenant; and could enjoin him from so continuing, and his new employer, who had knowledge of the existing contract with covenants, from continuing the employment. The clause providing for damages did not free the employe from the prohibition of the covenant by paying damages for a single violation of the covenant. Paris, April 23, 1925; (Gaz. Pal., Sept. 4, 1925).

Such a covenant is valid if limited as to time and place. Cf. Williston, Contracts; vol. 3, Sec. 1406, 146, 1451.

Contracts—foreign money—duty to repay equivalent. Defendants in London received a certain sum in dollars to pay over in France. Defendants made remittance several months later of a sum of French francs at the rate of exchange prevailing on the day the dollars were received. The franc had depreciated vis-a-vis the dollar in the meantime. *Held,* the party to whom the dollars were payable could claim the equivalent in francs at the rate of exchange prevailing on the day payment was tendered to him by the defendants. Cass., March 9, 1925; (Gaz. Pal., May 3, 1925).

Corporations—nationality of—alternative rule—administrative courts. The M. Co., a mining corporation, organized under the laws of France, had its "siège sociale" in France. The directors were all French and the stock, all but a fraction of which was nominative, was owned in part by French citizens, but the majority by a Belgian corporation. The principal business of the company was done in France and Belgium. In 1914 German troops occupied its properties and during the war the company ceased to operate. In 1917 German forces, by virtue of control in part, transformed the Belgian corporation, owner of the majority stock of the M. Company, into a German company, but without being able to cause a transfer to be made on the books of the M. Company of the stock theretofore owned by the Belgian company. After the war the stock which had thus passed into German hands was sequestered by the French government representative and sold.

Then the M. company brought an action under the French statute of April 17, 1919, to determine and recover its war indemnity, for damages to its real and personal property. The question was then raised as to the nationality of the M. company. *Held,* (1) the nationality was French, not German nor German-controlled; (2) the courts of civil law were without jurisdiction over the action. (Nancy, Nov. 29, 1924; Gaz. Pal., Apr. 1, 1925).

The decision is of interest as applying the double rule of nationality of a corporation. The opinion of the court observes that prior to the war nationality was determined by (a) law of incorporation, (b) location of "siège sociale" and (c) location of principal place of business performed; but that due to the exigencies of the war, an alternative rule was invoked, that of the nationality of majority stockholders or of those in fact controlling the corporation's operations—"to look behind equivocal appearances into the origin of the majority of the capital and to refer to the nationality of the majority of the stockholders in order to determine the nationality of the corporation itself." There appears to be no necessary inconsistency between the two rules. The present tendency in the French courts is to revert to the first of the rules. Cf. Paris, Dec. 17, 1919 (Gaz. Pal. 1920, 1.34); Douai, Dec. 24, 1923 (Gaz. Pal. 1924, 1.413); Recueil Sirey, 1924, 2.25.

Criminal law—Crime committed abroad by French citizen—lex delicti. Vigouroux was found guilty in the notorious affaire Demotte of fraud perpetrated in New York and declared a crime by the French code. On appeal, the conviction was set aside for failure of the trial court to find that the offense was punishable

under the law of the place where committed. Cass. May 8, 1925; (Gaz. Pal., July 31, 1925).

The French criminal law provides that a French citizen may be tried in France for any offense punishable under French laws, if the act is also an offense under the law of the country where the act was committed.

Immunity of Foreign State Representative—lack of sovereignty. The Department of Antioquia of the Republic of Colombia issued bonds payable in France. The holder of certain of these bonds brought suit against the chargé d' affaires of the Republic in his representative capacity as agent of the Department charged with the payment of the bonds. The chargé d' affaires claimed immunity as diplomatic representative of a sovereign state. *Held,* that the claim of immunity be denied and that the action may be prosecuted as the claim was not laid against him as chargé d' affaires but as financial agent of a mere department of a foreign state; the department itself not being a political entity does not enjoy sovereign immunity. Paris, July 11, 1924 (Gaz. Pal., Feb. 12, 1925).

Insurance—insured held co-insurer to extent of value of property insured in excess of amount of insurance written—proportional rule applied. The insured, going upon a voyage, insured three trunks for a total gross value of 10,000 francs, without specifying the particular value of the contents of each trunk. The policy provided for a value, in default of specific declaration, proportional to the number of pieces of baggage insured. The contents of one trunk were ruined, the actual loss being 4,000 francs. The total value of the contents of the three trunks was found to be 44,375 francs. The insured claimed recovery to the amount of 4,000 francs, the actual loss to him. The lower court awarded damages of 3,333.33 francs, as an arbitrary one-third of the total insurance written on the three trunks. On appeal, this judgment was set aside and the court held that the insurer was liable only for an amount equal to the proportion which the insurance bore to the total value, or 10,000/44,375, and on this loss only for this proportion of the actual loss of 4,000 francs, or 901.50. Paris, Jan. 3, 1925, (Gaz. Pal., Feb. 5, 1925).

The application of this rule seems to be novel in French law.

Judgments—Enforcement of foreign judgments—invalidation under foreign law for want of execution—effect in France. A party obtained a judgment in Denmark, but failed to attempt execution in Denmark within the period prescribed, so that by Danish law the judgment lapsed, subject to being restored by a special proceeding. The judgment plaintiff after the period prescribed by the Danish law and without having taken the steps required to restore the judgment, sought an exequatur to enforce the judgment in France. *Held,* the exequatur should be denied, as the judgment had lapsed by the law under which it had been obtained. Paris, March 20, 1925; (Gaz. Pal., May 9, 1925).

Sale of goods—C. I. F. contract—passage of title—change of vessel as relieving buyer from obligation to accept the goods or pay the price. The seller contracted to ship 100 tons of rice to the buyer in France, payment to be made against shipping documents under c. i. f. clause. The seller notified the buyer of the marks identifying the goods and of shipment by a certain vessel. Upon presentation of seller's draft for the rice with documents attached, it appeared that shipment had in part been made by a different vessel. The buyer refused to accept delivery. *Held,* refusal was justified. Appropriation of the goods to the buyer by the seller took place upon the latter's notification of shipment on a certain vessel and thereafter no modification could be made in the terms without the buyer's consent. Cass, Dec. 8, 1925; (Gaz. Pal., Jan. 7, 1925).

Sale of goods—passage of title—seller deprived of possession before separation of mass—lost profits as damages. A wine grower contracted to sell a specified quantity of wine from a vintage of grapes which had not yet been gathered. The seller obtained a lesser quantity of wine from the vintage than he had agreed to sell; a part he delivered to the buyer, a part he sold elsewhere and the remainder was requisitioned by the government. The buyer brought suit for damages. *Held,* (1) the buyer may recover the difference in the contract price of that part of the wine disposed of by the seller to other parties and the sum this buyer would have received upon resale, i. e., the buyer's lost profits; (2) as to that part of the wine requisitioned, the buyer may not recover as damages a sum representing the different between the contract price of that part of the total quantity agreed to be sold and the amount received by the seller in payment for the portion requisitioned, since it did not appear from the findings of the trial court that at the time the requisition was made by the public authorities the seller had separated from the entire mass the quantity agreed to be sold or had done any act to appropriate the mass to the buyer, and consequently title had not passed to the buyer. Cass, June 30, 1925; (Gaz. Pal., Oct. 7, 1925).

Sale of goods—payment against documents—buyer may not refuse payment upon claim of breach of warranty of quality. The sales contract provided for payment on presentation of sight draft with shipping documents attached. Upon presentation of draft and documents the buyer refused payment on the ground the goods were inferior to stipulated quality. The seller thereupon re-possessed himself of the goods and sued the buyer for damages. *Held,* the seller may recover. Rennes, June 3, 1925; (Gaz. Pal., Sept. 22, 1925).

Cf. Williston, Sales, 2d ed., Sec. 280 (c)—(h).

Legislation

See Journal du Droit International, December, 1925, page 1229-1240.

Bibliography

See Journal du droit International, December, 1925, page 1246-1300.

E. A.

Scandinavia

Legislation

Family names: It is well known fact that in the Scandinavian countries the family names of a great many people end in —sen; especially is this the case in Denmark (Jensen, Hansen, Petersen, etc.). In the years around 1900 about 60% of the population of the cities of Denmark (outside of Copenhagen) had names ending in —sen.

The other countries (Norway, Sweden, Finland, Iceland) have to some extent been worse off, because a great part of the population have had no family names at all; of course, all of the men, at least, have been known by a surname, but these were not real family names, but either names assumed by themselves or such as their friends and neighbors bestowed

upon them, derived from their occupation, certain characteristics, the place whence they came or where they lived, etc., and there was no assurance whatever that their children would be known by the same last name, or even all have the same surname.

As long as travel and migration was little developed, this condition of affairs did not lead to any very great practical difficulties, most people staying most of their lives inside the same parish or county where their relationships could be easily accounted for; but otherwise, after means of transportation and communication had been improved, and men would settle down far from their birthplaces and where their family relations were entirely unknown. Particularly, it was often most troublesome to find out and prove who were the real heirs of a deceased person.

This custom of giving children first names only has undoubtedly been universal in all of Northern Europe (in English we still refer to the first names only when we speak of baptismal names) and it would appear that the custom still held in Germany (at least in certain localities) to the latter part of the 18th century. For instance, in settling the estate of a Miss Bierfreund who had died without near relatives, there appeared claimants by the names of Bierfreund, Weinschenck and Kümmel. In investigating their rights it developed that about the year 1800 there settled in Denmark three German brothers who had no common family name, and that they assumed the names of Bierfreund, Weinschenck and Kümmel, respectively. This sounds rather "wet", and the explanation evidently was that all three were in the restaurant and saloon business. In Sweden, this custom existed until very recently. I have personally known three brothers, Swedish tailors, all the sons of Petter, who settled in the same Danish town, where one assumed the name of Lundborg, the other that of Lindquist, while the third permanently adopted the name of Petterson.

As long ago as 1828 the Danish government realized the disadvantage of this custom, and by an Act of May 30, 1828, ordained that thereafter at the baptism of children they should be given, not only a Christian but also a family name. The result, however, was confusion worse confounded. Either the people were silently opposed to this reform, or the priests were very lacking in imagination in suggesting appropriate family names, or both; the result was simply this: Heretofore, in one column of the register the child's name had been entered (say Hans or Marie); in another column was entered the names of the parents (say Peter Kusk and Kirsten, his wife). The only direct change which this Act accomplished was, that in the first column would now be entered Hans Petersen (Peter's son), or Marie Petersen (or sometimes Marie Petersdatter). Now, if Petersen had thereafter become the family's family name, it would not have been so bad, although it would eventually have killed off almost all real family names; but the indirect results were much worse. Peter Kusk's next son would be baptised, say Jörgen Petersen, the next Jens Petersen, the fourth Hemming Petersen, and so forth until he came to the end of his string. But when the sons of these four and later sons were baptised, they would not be called Petersen, but Jörgensen, Jensen, Hemmingsen, etc., respectively, with the natural and inevitable result that in the course of two generations it would take the most elaborate and painstaking research and testimony to establish relationships; identity of last name was no indication of relationship whatever and vice versa. To get away from this an Act was passed in the latter sixties of the last century, by which it was made obligatory to give the children their father's surname (illegitimate children excepted). This Act helped some, but at the same time it also helped to multiply the —sen names and to fix them forever, and it might be reasonably expected that within a generation ten to fifteen per cent of the population would bear the name Hansen, and that varying other percentages would bear the other more common —sen names, until probably three-fourths of the population would be —sens, with all the confusion resultant therefrom.

While the —sen or —son names in the other countries have not been nearly as numerous as in Denmark, still there have been too many of them, and then these countries often suffered from the lack of any family names at all.

All of the countries have, therefore, since the beginning of the present century passed laws with two objects in view: First, to induce the —sens to adopt real family names, and second, to protect the bearers of old family names from the adoption of these by people not belonging to the family. Such Acts have been passed as follows: Denmark, Act of April 22, 1904; Iceland, Act of November 10, 1913; Sweden, Acts of December 1, 1901, and December 19, 1919; Finland, Act of December 23, 1920; Norway, Act of February 9, 1923.

Eventually, the —sen names will be reduced to their proper proportion. In Denmark, at least, the Act appears to have caused a new trouble, namely hyphenated names. It seems that many people have a tendency to hold on to their old —sen names and then add thereto another name, most often derived from the names of places or of occupations.

Commercial Responsa

Denmark. The Wholesalers' Society of Copenhagen was incorporated by Act of April 23, 1817, and has since acted as a Chamber of Commerce for the whole of Denmark. Its so-called "Committee" has from the very beginning undertaken to give "Responsa" to inquiries about the customs of trade. It will give such responsa to individuals, corporations and public authorities, but it refuses to give them where questions of law are involved.

As soon as a request for a responsum is received by the secretary, it is printed and sent to each member of the Committee (about forty, as far as I remember) and a day is fixed for a hearing thereon. Before this hearing is held, the question is considered by a standing Responsa-Committee of six members and its counsel. This committee takes all the preliminary steps in looking up precedents, obtaining the opinions of experts, etc., and then makes a report to the full committee. After hearing, the full committee gives the responsum which is printed in "Börsen" (the Bourse), a daily paper and the official organ of the Committee and Society. The committee has published two digests of its responsa, one covering the years 1874-1884, and the other the years 1885-1909. A third volume covering 1910 to 1923 is about to be published, and this will not be a digest but will contain the responsa, etc., in full, in the same manner in which Court decisions are reported.

The standing and authority of the Committee's responsa are considerable; they are often cited by the Courts and decisions founded thereon, and they have been of wide influence in the development of commercial law during the last one hundred years. During

later years the Committee has received a yearly average of about 250 requests for responsa.

Norway: The Christiania (now Oslo) Merchants' Society was founded in 1841, and since 1878 it has undertaken to give responsa concerning the customs of trade. The work is performed through a so-called Committee of Fifty, although as a matter of fact the committee consists of eighty, namely fifty elected by and within the society, twenty-three representing the various subdivisions of the society and elected by them, and the seven Directors of the society. The procedure is as follows: All requests for responsa must be in writing and must be sent accompanied by the necessary exhibits to the Board of Directors. Upon receipt thereof it is submitted to counsel of the committee for examination and report. If it is found that the question is legal in its nature, or it shows signs of chicanery or evasion, an answer is refused. But if the question is found to be proper, it is then sent to one or another of the standing subcommittees, each representing a separate line of business. Here again the matter is presented by the committee's counsel who, among other things, must call the attention of the committee to all former responsa bearing on the question. After hearing, the subcommittee prepares an answer which is printed and sent to all the members of the Committee of Fifty, at the same time fixing a date for hearing by it. The responsum adopted at such meeting is forwarded to the Board of Directors, by whom it is sent to the person having requested it.

The responsa have been published in three volumes (including 1914). They are also published as an appendix to the monthly bulletin of The Union of the Merchants of Norway.

The responsa of the Committee of Fifty have always had great authority, and they are now quite numerous.

Finland: During the Russian time no such institutions as Chambers of Commerce existed, or would have been tolerated.

An act of August 10, 1917, prepared for their organization, and there are now a number of them with a Central Chamber at Helsingfors. This Central Chamber has been given authority to give responsa in regard to customs of trade, but its activity in this respect has been rather negligible so far. On the other hand, the Arbitration Board of this Central Chamber has been very active, and its awards may in many cases be taken as responsa concerning customs of trade. All requests for responsa are referred to the arbitration board. Unless requested by both parties, the Board will refuse to give responsa for use in actions already brought, or to be brought.

Sweden: Chambers of Commerce did not exist in Sweden until the beginning of the present century, but at the present time they may be found in all of the larger cities. The matter of giving responsa as to customs of trade was first ventilated in the Chamber of Commerce conventions of 1912 and 1913, but no organized activity resulted. Various Chambers of Commerce undertook from time to time to advise inquirers as to existing customs, but the whole movement remained sporadic, and there existed no collection of the various responsa given. In the years 1921 and 1922 new efforts were made to establish within the trade a central body with authority to give responsa, but this effort towards centralization was defeated. However, there has been established a uniform method and procedure to be used by the various chambers of commerce in giving responsa (adopted by all of them except that of Gothenburg). There has also been established a General Register for recording of all responsa of all chambers, and a special "Responsa Board" has been appointed with authority as to the form and keeping of the register, and from time to time to make desirable changes therein.

There appear to be quite elaborate provisions made about the procedure to be followed in order to obtain responsa, and about the steps to be taken, etc., in reaching conclusions.

For the sake of clearness, it may be well to state that in none of the countries do these responsa have any binding authority. They are opinions and not decisions.

However, they have, especially those of the oldest Board, that is of the Committee of the Copenhagen Wholesalers Society, gained such a reputation that requests for opinions often have been received from all of the other countries bordering on the Baltic, and in this connection it also may be stated that until recent years, at least, it was not uncommon for merchants of numerous Baltic seaport cities to submit their disputes to the Arbitration Committee of the Copenhagen Bourse, which is owned and conducted by the Wholesalers' Society.

Liquor Smuggling: In order to provide more revenue, and also for the purpose of reducing the liquor consumption, most countries during the war raised their liquor taxes very considerably. As a result an extensive smuggling of spirits has developed in the Baltic and along the coast of Norway.

A conference on the subject was held in Oslo in June, 1923, but the steps taken in consequence thereof do not appear to have influenced the illicit liquor traffic to any considerable extent.

A new conference of delegates from all of the countries bordering on the Baltic as well as from Norway was held at Helsingfors from November 24 to December 4, 1924. This conference agreed to a convention concerning the liquor traffic intended to suppress smuggling; the principal means proposed to reach this end are as follows: Each country agrees not to allow export of spirits, except in cases where it is made clear that it is not intended to be smuggled into another of the countries concerned. In addition the parties to the convention agree not to raise objection to search and seizure of spirits-smuggling ships found within twelve nautical miles from the shore, nor to the pursuit and subsequent search and seizure of ships beyond the twelve mile limit after they have been found smuggling within this limit.

Before this convention can be ratified, the municipal laws of several of the states concerned must be amended.

Criminal Codes: The criminal codes of most of the European states are rather old, and almost all of them were adopted at a time when the so-called Classical School was dominant in all countries. In other words, they build up the theory that the will of man is entirely free, that at all times he can act or not as he chooses, and that if he chooses to do something forbidden by law he must be punished; retribution must be dealt out to him in order to satisfy the wounded moral feelings of society. Reduced to its last essence, this theory means that the object of punishment is revenge.

Since these codes were adopted, other conceptions of crime, the criminal and of his punishment have arisen, and the revenge idea has given way to the

thought that criminals are punished in order to protect society. This latter idea is now dominant among criminalists, both teachers, judges, prosecutors and officers of penal institutions. But the revenge theory is still the popular conception. The man injured by a crime reacts to it, not by a desire to protect society in general, but by his own craving for satisfaction and revenge.

Since the beginning of the present century most of the European states have made efforts to reform their criminal codes so as to have them better conform to modern thought and ideas, but nothing but patching has been accomplished so far. Full codes have been prepared in great numbers, by Switzerland 1903, 1908 and 1916, by Austria 1909 and 1912, by Serbia 1910 and 1923, by Denmark 1912, 1917 and 1923, by Germany 1909, 1911, 1913 and 1919, by Italy 1921, by Finland 1921 and 1922 and by Sweden 1923.

None of these proposals have been enacted into law, and there are still lively discussions going on around and about them.

The reason for this inability to reach results seems to be, that either the proposed code is founded on the retribution theory and thereby arouses the opposition of all criminalists, or else it is built up around the protection of society theory and thereby raises the representatives of the "moral" forces and the public in general into opposition.

The proposed Swedish code of 1923 is remarkable in this that it tries to build upon both ideas and theories and does so deliberately.

It has been prepared by a commission, but the real author thereof and the leading spirit within the commission has been Dr. Johan C. W. Thyrén, and the commission itself acknowledges this by stating in its preface that it has built its code upon the foundation of Thyrén's book of 1916: Preliminary Proposal for a Criminal Code.

For this reason it is of interest to look into Thyrén's ideas about the object and purposes of criminal law and of punishment.

He states that both ideas are old, but within the preventive-protective school great battles raged as to how the prevention and protection should be obtained. The oldest idea was that punishment should be so adapted as to deter the criminal and others from ever doing such a thing again, the logical result of which were death sentences or incarceration for life.

Then arose the idea of correction; the criminal was to be reformed which, when carried out to its logical conclusion, would lead to keeping the criminal forever in an atmosphere entirely superior to anything to which he had been brought up or had been used; otherwise, he would surely revert to type (vide, the enormous number of recidivists).

The most recent idea is, so to treat the crime and criminal as best to protect society. All of these theories, fighting each other, were, however, unanimous that the idea of retribution, of revenge must be entirely eliminated.

The revenge theory, on the other hand, maintained that the first and main reaction to a crime was a feeling that the moral sense of society had been wounded. For the sake of society itself it was necessary that this wound should be healed, and the punishment ought therefore to be so devised as to satisfy society's feeling of indignation. Carried to its logical conclusion this means a reversion to the old idea of an eye for an eye and a tooth for a tooth.

Thyrén calls attention to the truth that law, and criminal law especially, is not an exact science. In mathematics where the elements are exact, a theory is either right or wrong. But law deals with a state of facts which are not logical conclusions, it deals with things that happen. It is true, they all have a cause, but it is impossible to predict that they will happen at all, or what it will be which caused them to happen.

There is a real antinomy between the two principles of protection and of retribution, founded upon the antinomy between the idea that the acts of man are the expressions of a free will and the contention that all such acts are the necessary results of antecedent causes.

Under primitive conditions the conflict between the two theories is not apparent; at this stage nobody thinks or bothers about the psychological problems involved. The revenge is inflicted without considering the subjective aspects, it makes it impossible for the individual to do the same thing again, and this very fact in itself is a deterrent for other evilminded persons.

But as civilization and culture advance this standpoint cannot be maintained. Inevitably, the cause of the crime is sought after, and then the antinomy appears.

The retribution theory must found itself upon moral responsibility, on the free will of man.

The protection theory must depend upon the possibility of influencing by suggestion, upon education.

Many well meant attempts have been made to harmonize these two theories, but it is impossible. The free will of man (at all times and under all circumstances) and his ability to act under the compulsion of suggestions are contradictions in adjecto. They cannot be made to blend any more than fire and water. Nevertheless, criminal law must build on both.

Most men of education know and realize that the will of man is not free, that all of his acts are determined by antecedent causes. The same knowledge lies slumbering in all the rest of mankind; they all make excuses for their wrongful acts and mistakes.

But notwithstanding, all men feel that they are free and the great majority of them believe that their acts are the results of their free will. All men react to the deeds of themselves and others by feelings of pride, love, revenge, remorse, shame, etc. These reactions are facts which cannot be eliminated.

This being the situation, the enactment of a criminal code built entirely on the protection of society theory would be as much of a legislative mistake and crime as the enactment of the prohibition laws of this and other countries. The psychology of man cannot be changed in a flash by a law arbitrarily enacted by men.

The theory of protection for society must therefore be the foundation stone of all criminal law, but the existing illusion about man's free will must constantly be taken into consideration, and in framing its provisions use must be made of the existing illusion. To the protection theory punishment would be meaningless as a means of deterring or reforming a criminal, if his will was not bound by antecedent causes, that is, open to suggestions and education. But on the other hand punishment would be a hopeless way by which to obtain such determent and reform, if the criminal did not believe and feel himself free, and was unable for instance to feel remorse. If he was a consistent fatalist he would look upon his acts as the necessary results of antecedent causes, would feel no

remorse and would be unable to react to suggestions impelling him to act otherwise the next time.

It would take altogether too much time and space to point out in detail the respective influences of the two theories in the proposed code. The influence of the protection theory shows itself most clearly in its provisions stating who are not subject to punishment. The biologic criterion is adopted, as the same is most clearly stated and defined by Carl Stoos in his Suggestions to a criminal code for Switzerland of 1893: "Wer zu Zeit der that geisteskrank oder blödsinnig oder bewustlos war, is nicht strafbar." And this is a command to the prosecuting officer and to the judge. They must find out whether the accused comes under this provision and are not to prosecute or sentence any person who was either insane, of unsound mind or unconscious of what he was doing, and who is insane, feeble minded or unconscious is not to be determined by twelve or any other number of laymen guided or confused by partisan experts, but by a competent continuous board of physicians, appointed for the purpose and officiating under proper regulations and control.

A. T.

Literature

In Tidsskrift for Retsvidenskab, 1925, p. 130, is found a review by the Norwegian Romanist, Edward Hambro, of two books on civil law, namely: Text Book on Roman law from Augustus to Justinian, by W. W. Buckland, Regius Professor of civil law at Cambridge, 1921, and Sohm: Institutionen, Geschichte und System des Römischen Rechts, 17th edition, revised by Ludwig Mitteis, edited (after Mitteis's death) by Leopold Wagner, Leipzig, 1923.

It may be of interest to print a translation of a single paragraph of this review referring to professor Buckland's book:

"However, for all non-English jurists, even those not particularly interested in Roman law, professor Buckland's exposition has a very special interest in this that it is written by an English jurist and addresses itself to English jurists and students. We have here, as probably nowhere else in English literature, a complete system of private law, in itself entirely free from the much dreaded technicalities of English law, namely the Roman system of private law according to the Institutions, fixed, clear and well known to continental jurists, but in this work set forth and explained for English lawyers in relation to their special idiosyncrasies derived from their national law. We non-English lawyers do thereby gain a first hand view and understanding of the English lines of thought and how, according to this English jurist, the Roman legal doctrines and the legal institutions derived therefrom partly differ from and partly agree with the law of England. And in addition, we learn the meaning of a number of English termini technici which appear in the book as translations or explanations of corresponding Roman terms."

In Memoriam: Julius Lassen

Julius Lassen was born in 1847 and died at the end of 1923. He was the last of a circle of jurists (Aagesen, Goos, Evaldsen, Lassen) who laid a new foundation for the Danish (and to some extent for the Scandinavian) science of jurisprudence. He may be called a man of one book, in so far as for thirty years he wrote and rewrote Den Damske Obligationsret (the Danish Law of Obligations, ex contractu and ex delicto, Contracts and Torts). Not that his other writings are of no consequence, but his monument will be and remain the above mentioned work, and through that will his ideas and views come down to and influence those who come after him.

In many ways Lassen was one of, if not the most characteristic, exponent of Scandinavian jurisprudence which, like English and American law, build on the decisions of the courts as the law of the land, but unlike the Anglo-Saxons are not satisfied by a mere casuistry of decisions, but analyze them thoroughly and reduce them to a system. In this they are like the Germans, but from these they differ by sticking to the law that is and showing what it is through reference to the reports, and do not, as did Windscheid and others, write volumes on the law of their own day without referring to a single decision of their courts, satisfying themselves if they could find corroboration in the Pandects.

While Scandinavians build their law on the decisions by the Courts, they do not, as we do, build them on the opinions of the courts; and they could not very well do so, even if they wished to, as their courts do not write opinions in the sense our courts do. They state the facts very fully and carefully, and then "rebus sic stantibus" give their decisions. This may be inconvenient at times, as it may take some study and effort to find what principle the court applied in reaching its decisions, but on the other hand it saves one from reading a great number of longwinded opinions, and then often realizing that the opinion does not justify the decision and in addition from all dicta and obiter dicta. Lassen had a great authority in all of Scandinavia and a unique ability to get others to pull together and to pull with him. He was the prime mover in all efforts looking towards obtaining uniform Scandinavian laws, and the main force in obtaining agreement about and passage of a great many of such laws, particularly within the last twenty years.

Some thirty years ago, Scandinavian literature was discovered by the rest of mankind and is now read over all the earth and translated into almost all languages. Some Scandinavian juridic literature has been translated into both French and German, and quite a number of Continental lawyers have taken the trouble to learn Danish or Swedish, or both, so as to be better able to follow what the Scandinavians contribute. Some day, an interest may awaken even in England and America in getting acquainted with a system of jurisprudence, continuous for a thousand years and more, free from Romanisme, simple and modern. If such a thing should happen, Julius Lassen is the man to go to.

A. T.

Italy

Legislation of 1924

The Italian legislation for the year 1924 continued its breach with the accumulated governmental systems inherited from the past centuries and vainly mended by succeeding generations to meet the new emergencies until these systems now consist more of patches than any original substance. The Fascist régime continued its policy of discarding old social and governmental systems which have proved inadequate and substituting therefor something more adapted to the need of the day.

A large proportion of the 944 different acts of Parliament passed during the year has to do with the

reorganization of the various departments and cover the appointment and retirement of their personnel with pension.

The judicial system in Somalia was modified. Farming activities were encouraged in Tripolitania. The Inheritance Tax was abolished in Libia. A new Province of Carnaro was established and Fiume made its administrative center. Special legislation was passed to help solve the divorce confusion of Fiume. Numerous other provisions were made for the Colonies and the new Provinces and to these districts was extended the obligatory old age and health insurance.

Prizes and traveling schools were provided to further encourage Agriculture. More experimental stations were established and, in certain instances, farm loans were facilitated. The laws covering drainage of swampy districts and their colonization were reformed and recompiled, as was done also with those covering the forest and wooded districts. Mountain pasture land was given special consideration.

Obligatory insurance against involuntary unemployment, and against old age and sickness, were again considered, and there was added the insurance against injury to cattle.

The law covering public charities was entirely reformed and Consumers' Leagues were encouraged as were also the cooperative home provisions for railroad employes. Some further laws were passed covering the public health and provisions made for future earthquake victims, as well as for the relief of the victims of the late disasters.

Measures were taken for the revision of the New Civil Code and for the publication of the New Civil Procedure Code and the Commercial Code and the Mercantile and Marine Code. The reformation of the political units of Provinces and Communes was continued with the consolidation of various units.

A new Court of Assize was established in Spezia. Provisions were made to facilitate execution in Italy of judgments obtained in Fiume. Consideration was given the judicial administration of what was formerly Austrian territory.

The Consular Service was reorganized. The laws controlling exportation and importation and their embargo underwent modification. Among the treaties and international agreements approved were the Debt Settlement with the Serb-Croats, the Citizenship Treaty with the Balkan States, the Extradition Treaty with Austria, Hungary, etc., the Commercial Treaty with Austria and with Switzerland, and the Losanna Treaty with Turkey.

The national defense received its customary attention. A reorganization of the Supreme Defense Commission was effected. The marriage of army officers was discouraged. The Military Police (Carabinieri) were reduced to 65,000. School facilities for all military officers were increased. Aeronautics attracted some legislation. The Voluntary Militia was made part of the armed forces of the State, and placed directly under the Prime Minister. It consists of one general with twelve Zones Commanders and ninety-five legions. Each legion comprises three to five cohorts, each cohort has three companies (centurie) and each company has three platoons (manipoli). Admissions are made by application to the legion commanders.

The railroad police was established 30th October, 1924, as a sort of voluntary militia and charged with the maintenance of order on the railroads and the protection of the National Treasury's interest therein. It also was made part of the armed force of the State. It consists of fourteen legions distributed according to the railroad districts obtaining. Their pay is fixed from three and a half lire a day for the private to seventeen lire a day for the legion commanders.

All taxation showed the restless changes peculiar to the After-War period. They are undergoing constant reclassification as are the administrative units charged with their enforcement. Custom duties were lifted from certain commodities, especially agricultural implements. Industrial taxes covering coffee, sugar, gas and electricity, beer and glucose, explosives, soap, etc., were modified and reformed. Agricultural incomes were given favorable exemptions.

Commercial, nautical, industrial, artistic and agricultural and general education received extensive consideration. New Lyceums (academies) were established. Farm schools were given generous consideration and special courses in telephony and telegraphy were established in Rome. A new university was established in Trieste.

Railroad and railway tariffs underwent extensive changes and every facility was given their military use. The postal regulations were modified in many instances and new postal services were provided between the islands and the mainland. Special provisions were made for the Holy Year tourists and souvenir postals were made to carry heavier postage.

The election laws, having to do with the election of National Deputies, were again reformed and recompiled by the Act of 13th December, 1923 (Gazz. Uff. 7 Jan., 1925). These election reforms replaced the law of September 2, 1919. The new law qualifies as electors all Italians of twenty-one years of age. Those under arms are temporarily disfranchised.

The Voting Lists are made permanent with annual revisions, and are prepared by the Communal Commission (selected by the Consiglio Communale) under supervision of the Provincial Electoral Commission, which in turn reports to the "Collegio Nazionale." The lists have five separate subdivisions comprising those qualified, those disqualified, applicants rejected, emigrated electors, and those in military service. These lists are publicly exposed on the "albo pretorio" and appeal again lies to the Provincial Electoral Commission, from which appeal again lies to the local Court of Appeal. The permanent lists are open to public inspection and preserved in the communal and provincial archives respectively. Each elector receives a Certificate of Qualification from the Collegio Nazionale. Only those so registered can vote and only upon the presentation of this certificate.

The entire nation constitutes a single National Collegio, subdivided according to an approved table affixed to the law and showing the number of Deputies ascribed to each "Circoscrizione" (Congressional District).

The paraphernalia, including the prescribed seal and ballot box, is distributed the Saturday before the election to each local election division (Sezione). Between the Sunday and the Wednesday preceding the election, the divisional board (ufficio elettorale) is organized. The service of election officers is compulsory with compensation.

The party nomination petitions must not contain more than two-thirds of the number of deputies to be elected from the particular congressional district (Circoscrizione) and must have at least three hundred sub-

scribers. Candidates cannot appear under different party names, but may appear in two different "circoscrizioni."

These nomination petitions are filed with the Court of Appeal which corrects and verifies the same and transmits them to the Court of Appeal at Rome as the National Election Board (Ufficio Centrale Nazionale).

The ballots are prepared by the Minister of Interior. Each party list carries a distinguishing mark or sign and each candidate therein a consecutive number.

The ballots are numbered consecutively the day before the election and given into the custody of the "Carabinieri" till seven a. m. the following morning. The elections are held on Sunday. The polls open at seven a. m. and close at nine p. m. The Election Clerk (or Secretary) keeps the minutes. The police cannot enter the polling place unless requested by "il Presidente" (the Election Judge), except in case of disturbance, in which case the Sheriff (gli ufficiali di polizia giudiziaria) may enter without permission.

The vote is cast by affixing a cross over the party mark selected and, in a place provided on the ballot, the voter is permitted to write the name of one, two or three preferred candidates (as the case may be) or their identification numbers. Assistance is allowed in case of disability.

The Election Count follows immediately at the close of the polls and a record is made of the party vote and the preferred votes cast for the individual candidates. If the count is not concluded by seven a. m. the following morning, the ballots, etc., are carefully guarded and taken to the Office of the Clerk of the Court of Appeals of the local "Circoscrizione." The concluded Divisional or Precinct returns are forwarded to the "Pretore" and there verified, whence they are sent to the Office of the Clerk of the local Court of Appeals, which compiles the local official count for the respective Congressional District. These returns are in turn forwarded to the Court of Appeals at Rome, which, constituting itself a National Election Board, compiles an official count and certifies the successful candidate. A copy of this is forwarded to the Secretary (or Chief Clerk) of the Chamber of Deputies, to which is reserved the official certificate of election.

In selecting the successful candidates, to the party having a plurality of the votes cast (and polling 25% of the entire vote) is assigned two-thirds of the entire number of Deputies to be elected (to wit, 356). And in each "circoscrizione" these candidates are declared elected and selected according to their vote of preference. The votes of the Minority Parties are all totalled and divided by the remaining number of Deputies to be elected and this quotient divided into the vote of each party will give the number of deputies to be assigned it. The number of deputies to be elected throughout the Kingdom is fixed at 535.

The qualifications of the Deputies are fixed. Incompatibility of office is defined. The election offenses are defined and penalized and the procedure prescribed.

J. P. B.

(The contributions of the Comparative Law Bureau will be continued in the May number.)

Provision in Will Forfeiting Share of Contesting Beneficiary

(Continued from Page 239)

lic policy, and is valid, remembering, of course, what a great Frenchman has said: "All generalizations are false, including this one."

Some courts make the following exceptions to the general rule: First, where the clause is annexed to a legacy without an express gift over; second, where there exists a probable cause of contest; third, where contestant is an infant; fourth, where the forfeiture extends to parties other than the contestant. And, some courts excuse themselves from enforcing the forfeiture by a very strict interpretation of what constitutes a contest.

Bearing in mind that Edward Bok, in "Twice Thirty" says that wisdom never comes until sixty, if then, and it would seem wisdom should come to the editor of a woman's magazine sooner than to a lawyer, nevertheless, we venture that a rule upholding the forfeiture clause, except where probable cause to dispute the will exists and also in case contestant is an infant, or where the forfeiture extends to parties other than contestant, is the proper rule.

To recognize the probable cause exception comes most nearly approximating justice in all cases, both from the standpoint of public policy and from the probable intention of the testator. It would still discourage the bringing of vexatious suits, which, after all, is ordinarily the real purpose of the testator where there is no actual undue influence and where the will is not dictated by someone else. This seems far the better rule, for, after all, society is more interested in practical equitable results in the maximum number of cases than it is in the abstract academic attempts of some of the courts and law school professors in reducing the law to a perfect formal rationalistic theory. While such attempts should not be over criticized, it was just such technical legal arguments that caused our late Ambassador Walter H. Page, after reading Secretary Lansing's briefs on England's blockade, to write Colonel House in 1915: "I sometimes wish there was not a lawyer in the world." He assures Colonel House that lawyers "will butt and rebutt as long as a goat of them is left alive on either side." He explains that after reading the briefs and law books: "It took me some time to recover from the word-drunk debauch and to find my own natural intelligence again, the common sense I was born with."

Can Anyone Supply These?

Philadelphia, March 29, 1926.

To the Editor: Some years ago I made a collection of the Reports of all Bar Associations in all countries. It is now in the Library of the Harvard Law School. It lacks, I believe, but a single volume:

"Preliminary Meetings of the California State Bar Association, held July 11 and 27, 1889, and January, 1890." (62 pages.)

If any member of the Association will be good enough to supply to the Library this missing volume, he will complete the collection and will greatly oblige, Yours, etc.,

FRANCIS RAWLE.

Journal of American Bar Association,
1612 First National Bank Building,
Chicago, Illinois.

MEMBERSHIP IN AMERICAN BAR ASSOCIATION

Qualifications

THE constitution declares membership in good standing at the bar of any state during the last three years (part of which may have been spent in one state and part in another) a prerequisite to election.

Dues

The dues are $6.00 per year. There is no initiation fee. Member receive, as perquisites of membership, the monthly "American Bar Association Journal" and the printed annual reports of the proceedings of the Association, constituting a valuable year book of the profession in this country, in which their names are listed as members, both in the alphabetical list and in the list of members arranged by cities and towns in states.

Life Membership

Annual dues, at the option of any member, may be commuted by the payment of $200.00 at one time; and thereafter no further dues shall be payable by any such member.

Application Blanks

Blank applications for membership in the American Bar Association may be obtained by applying to any of the following:

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Simeon E. Baldwin, 11 Center street, New Haven, Conn.
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Francis Rawle, Packard Bldg., Philadelphia, Pa.
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Director .....George A. Malcolm, Supreme Court, Manila, P. I.

Eleventh District

Director .....Henry G. Molina, San Juan, P. R.

How to Kill an Association

(From the New York Telegram)

1. Don't come to the meetings.
2. But if you do come, come late.
3. If the weather doesn't suit you, don't come at all.
4. If you do attend a meeting, find fault with the officers and other members.
5. Never accept an office, as it is easier to criticise than to do things.
6. Nevertheless, get sore if you are not appointed on a committee, but if you are, do not attend committee meetings.
7. If asked by the chairman to give your opinion regarding an important matter, tell him you have nothing to say. After the meeting tell every one how things ought to be done.
8. Do nothing more than is absolutely necessary; but when other members roll up their sleeves and willingly, unselfishly use their ability to help matters along, howl that the association is run by a clique.
9. Hold back your dues as long as possible, or don't pay at all.
10. Don't bother about getting new members. Let the secretary do it.
11. When a banquet is given tell everybody money is being wasted on blowouts which make a big noise and accomplish nothing.
12. When no banquets are given say the association is dead and needs a can tied to it.
13. Don't ask for a banquet ticket until all are sold.
14. Then swear you've been cheated out of yours.
15. If you do get a ticket, don't pay for it.
16. If asked to sit at the speaker's table, modestly refuse.
17. If you are not asked, resign from the association.
18. If you don't receive a bill for your dues, don't pay.

NEWS OF STATE AND LOCAL BAR ASSOCIATIONS

Alabama

State Bar Elects Officers

The State Bar of Alabama, at a meeting in January, elected R. H. Powell of Tuskegee, President; John A. Lusk of Guntersville, first vice president; O. L. Tomkins of Dothan, second vice president. W. B. Harrison of Birmingham was re-elected secretary. The State Bar decided to hold all future meetings of the State Bar Association in either Birmingham or Montgomery, as these were the most convenient locations for such gatherings. It also voted to meet again in Birmingham to hear arguments in the case of certain Birmingham attorneys charged with unethical practice in case the Jefferson County Bar Grievance committee did not investigate and take action before a certain time.

Members of the state board are Joe E. Pelham of Chatom, F. R. Bricken of Luverne, B. Deg Waddell of Seale, Henry F. Reese of Selma, R. H. Powell of Tuskegee, Bernard Harwood of Tuscaloosa, J. K. Dixon of Talladega, A. J. Harris, Decatur; John A. Lusk, Guntersville; Thomas J. Judge, Birmingham; John H. Peach, Sheffield; W. S. Huey, Enterprise; Norvelle R. Leigh, Jr., Mobile; R. A. Cooner, Jasper; J. Render Thomas, Montgomery; J. F. Aldridge, Eutaw; L. F. Gerald, Clanton; Henry Teel, Goodwater; O. L. Tomkins, Dothan; N. C. Stone, Bay Minette.

Florida

Florida Bar Holds Annual Meeting

The Florida State Bar Association held its nineteenth annual session at DeLand, on April 2 and 3. It was one of the most successful and delightful ever enjoyed by our Association. There were about 150 in attendance and the speakers included Hon. Chester I. Long, President of the American Bar Association, who delivered a masterly address on "Liberty with Government;" Hon. Charles A. Towne, of New York City, who spoke ably on "Some Duties of the Lawyer As a Citizen;" Hon. Josiah Marvel, of Wilmington, Delaware, who delivered an instructive address on "The Spirit of Our Constitution."

Other addresses on the program, all of which were also of a high order, were by Hon. H. R. Trusler, Dean of the Law School of the University of Florida; annual address by Hon. W. W. Hampton, President of the Association; "Magna Charta, Its History and Influence," by Hon. Louie W. Strum, Associate Justice of the Supreme Court, Tallahassee, Florida. The address of welcome was delivered by Hon. Lincoln Hulley, President of John B. Stetson University, and the response on behalf of the Association was made by Phil S. May, of the Jacksonville Bar. Hon. Cary D. Landis of the DeLand Bar, presided at the annual banquet held at the College Arms Hotel.

Hon. W. I. Evans, formerly President of the Miami Bar Association and one of the ablest younger lawyers in the state, was elected President in a close contest with Hon. Cary D. Landis of the DeLand Bar. Mr. Evans has made a remarkable record in the upbuilding of his local bar association at Miami, and the State Bar Association expects great things during his administration.

The writer was re-elected Secretary and Mr. John B. L'Engle of the Jacksonville Bar, was elected Treasurer. Messrs. Scott M. Loftin of Jacksonville, W. W. Hampton of Gainesville, Frank D. Upchurch of St. Augustine and S. D. Clarke of Monticello, compose the new Executive Council.

An unusually large number of new members were added to the roll during the convention, which was made very enjoyable by the splendid entertainment furnished by the local bar of DeLand.

Gov. HUTCHINSON, Secretary

Idaho

State Bar Commission Holds Conference

The Idaho State Bar Commission recently held a conference with the faculty and students of the University of Idaho Law School at Moscow, Idaho, for the purposes of co-operating in an effort to coordinate more effectively the standards of legal education and the requirements for admission to the bar. During their two days' visit at the Law School the Commission attended various classes and discussed phases of the work with the law instructors. Mr. Robert D. Leeper, of Lewiston, chairman of the Bar Commission and president of the State Bar Association, was instrumental in bringing about the conference. Other members of the commission attending were Frank Martin of Boise, A. L. Merrill of Pocatello and S. S. Griffin of Boise. The law faculty members who met with the Commission were Dean Robert M. Davis, Prof. J. J. Gill, Prof. S. A. Harris and Prof. M. H. Merrill. Dean Davis stated that the conference had been quite a success and it would probably become an annual event.

Minnesota

Bar Activities in Minnesota

The Faribault, Minnesota, lawyers organized a one hundred per cent membership local association at a meeting on February 18. A constitution and by-laws were adopted and the following officers were elected: Eugene H. Gipson, president; Charles S. Batchelder, vice-president; James P. McMahon, secretary-treasurer; Judge A. B. Childress, trustee; John W. LeCrone, trustee.

The twelfth district bar association of Minnesota was formed at a meeting at Granite Falls on March 3. The meeting was called at the instance of A. W. Ewing of Madison, who was elected president. C. A. Fosnes, of Montevideo was chosen vice-president; Olaf Nordbye of Granite Falls, secretary; C. A. Oberg of Willmar, treasurer. The executive committee consists of Richard F. Daly of Renville, J. N. Johnson of Canby, and Alva R. Hunt of Litchfield.

The Seventeenth Judicial Bar Association of Minnesota held a meeting at Fairmont on Wednesday, February 10, on call of President E. H. Nicholas. The purpose of the meeting was to consider proposed changes in the constitution of the State Bar Association whereby members of the district association will also be members of the state body. The proposed changes were approved unanimously.

Missouri

News From Missouri

A district meeting of the Missouri State Bar Association held at Springfield, on February 27, was the most successful event of its kind ever held in Missouri, according to President John T. Barker, of the State Bar Association. President Barker is responsible for the series of district bar meetings held over the state, which, he explained, are for the purpose of "Carrying the State Association to the Lawyers." Much time was given to discussion of the crime wave and the best methods of checking lawlessness and to the investigation being made by the Missouri Association for Criminal Justice. Hon. Henry L. Jost delivered an address on "Modern Social and Legal Conditions." President Barker also delivered an address dealing largely with the crime situation. He announced that the state association would hold its annual convention at Kansas City on October 1 and 2.

The bar association of the Fourteenth Judicial Circuit of Missouri was formed at Jefferson City at a meeting early in March. Officers elected for the first year are: Roy D. Williams of Boonville, president; William C. Irwin of Jefferson, vice president; N. C. Hickcox of California, secretary, and Harry Kay of Eldon, treasurer. The following executive committee was chosen: Ira H. Lohman, J. B. Gallagher, W. S. Stillwell, A. J. Bolinger, L. B. Hutchinson and C. W. Journey.

The Cole County, Missouri, Bar Association in January elected the following officers: President, Thomas Speed Mosby; vice-president, Ira Lohman; secretary, H. F. Lauf; treasurer, Tom Antrobus.

Nebraska

State and Local Associations Act

President E. E. Good of the Nebraska State Bar Association has selected the following representatives of the association for the conference of bar association delegates to be held in Washington, April 28, with Charles Evans Hughes as chairman: Delegates—Chief Justice A. M. Morrissey, Lincoln; R. A. Van Orsdel, Omaha, and F. A. Wright, Omaha. Alternates—T. W. Blackburn, Omaha; Charles Kelsey, Norfolk, and Charles H. Sloan, Geneva. President Good also appointed H. H. Wilson of Lincoln, Gilbert M. Hitchcock of Omaha, and Congressman Robert G. Simmons of Scottsbluff, as representatives to the thirtieth annual meeting of the American Academy of Political and Social Science, to be held May 14 and 15, at the Belleville-Stratford hotel, Philadelphia, at which the general topic will be, "The United States in Relation to the European Situation."

The Executive Committee of the Nebraska County Attorneys Association, at a meeting held in Fremont on March 5, took action to combat the campaign for the abolition of capital punishment by placing accurate statistics before the people and using its efforts to emphasize the importance of the death penalty as a deterrent to crime. Hon. Bert M. Hardenbrook, of Ord, president of the association, sounded the keynote of the campaign in his opening address.

In resolutions drawn up at the meeting the county attorneys set out that the retention of the death penalty would accomplish three purposes: (1) It will forever stop that breed of outlaws; (2) It will remove from wardens and keepers the constant menace arising from confinement of prisoners under long life sentences; (3) It will set an example of penalty which will be a deterrent to other degenerates tempted to commit like murders.

The resolution was adopted as follows: "Now, therefore, be it resolved, that we do hereby unanimously endorse not only the present statute providing the death penalty for premeditated murder and murder in the commission of robbery, but also we deplore, as inimical to the interests of the state and as jeopardizing the lives of innocent and offending men, women and children, the activities of those misguided sentimentalists who have convulsions at the thought of the state exacting the life of a murderer but suffer no corresponding shock of sensibility when the murderer takes the life of his victim and who would abolish the death penalty, but also we reaffirm our faith in the following proposed legislation having for its object swifter and more certain application of penalties."

The legislation proposed was enumerated in 17 divisions, advocating the repeal of the indeterminate sentence law, the prohibiting of a parole to any person who cannot convince the parole board beyond a doubt by competent evidence that he was not guilty of the crime for which convicted, prohibition of sale of brass knuckles or other implements used by the thug or outlaw, the abolishment of the "presumption of innocence" rule, legislation permitting the supreme court to increase as well as decrease penalties on appeal, amendment of the state constitution so the legislature may provide for a five-sixths verdict in criminal cases, to conform with the present law in civil cases, and other legislation which the county attorneys believed necessary to combat crime.

The Ninth Judicial District Bar Association of Nebraska held its third annual meeting at Norfolk, on Monday, February 22. Justice George A. Eberly of the State Supreme Court delivered an address on John A. Erhart, pioneer Stanton lawyer, who passed away during the past year. At the banquet Judge A. M. Morrissey, of the Supreme Court of Nebraska, delivered an address on the subject of "British and American Courts and Lawyers." Justice Morrissey gave his hearers the very interesting results of his study of English courts and their procedure during a recent visit to England. Officers elected for the year are: M. D. Tyler, of Norfolk, president; Douglas Cones, of Pierce, vice-president; R. J. Shurtleff, of Norfolk, secretary, and Lyle E. Jackson, of Neligh, treasurer. The executive committee consists of R. H. Rice, Neligh; J. Blezek, Plainview; A. E. Wenke, Stanton; Richard Steele, Creighton; Harry E. Stanton, Winside; R. R. Moody, West Point, and M. B. Foster of Madison.

President E. E. Good, of the Nebraska State Bar Association has appointed Fred A. Wright of Omaha chairman of the committee on affiliation of local bar associations, and Harvey Johnson, of Omaha, chairman of the membership committee.

The Dakota County, Nebraska, Bar Association was organized on February 11 at Dakota City with a one hundred per cent membership.

Nevada

Getting Ready for the Legislature

President Prince A. Hawkins of the Nevada Bar Association has addressed letters to each member of the various bar association committees requesting a written report of the committee prior to the annual convention January 21 and 22, 1927. Committees which deal with matters involving possible action by the legislature, which convenes early in 1927, are particularly urged to report, so that the Bar Association legislative program may be thoroughly defined and understood in plenty of time. Following are members of the legislative council recently appointed for the purpose of assisting in securing proper legislation on matters with which the Bar is particularly concerned: E. F. Lunsford, Reno; A. L. Haight, Fallon; A. S. Henderson, Las Vegas; G. A. Montrose, Gardnerville; Morley Griswold, Elko; Roger Foley, Goldfield; Edgar Eather, Eureka; J. A. Langwith, Winnemucca; H. E. Browne, Austin; A. L. Scott, Pioche; F. L. Wood, Yerington; J. H. White, Hawthorne; W. D. Hatton, Tonopah; John M. Chartz, Carson City; C. L. Young, Lovelock; W. S. Boyle, Virginia City; H. W. Edwards, Ely; Thomas A. Brandon, Winnemucca, and Prince A. Hawkins and H. R. Cooke, Reno.

North Dakota

Judicial Council Movement Started

Chief Justice A. M. Christianson, of the Supreme Court of North Dakota, is pushing a movement for the organization of the North Dakota Judicial Council at a meeting to be held in Bismarck during the latter part of April or early in May. Under the proposed plan all district judges would be invited to attend and take part in the deliberations of the Council, which would give North Dakota an official body for the exchange of ideas similar to those provided by law in several other states. It is planned to make the meeting of the Council an annual affair, and Judge Christianson expressed the opinion that the Supreme Court has authority to organize it under the rules laid down for its operation. He added, according to an article in a recent issue of the Bismarck Tribune, that the purpose of the organization would be to give the judges a meeting ground for the discussion of mutual problems and the devising of means and methods for a better administration of justice. Many judges have already indicated their willingness to support the movement.

Texas

News From Texas

Hon. Albert J. Beveridge, of Indiana, Sen. Thomas J. Walsh, of Montana, and Hon. Chester I. Long, president of the American Bar Association, will be among the speakers at the forthcoming joint convention of the Texas, Arkansas and Louisiana bars at Texarkana, on April 22, 23 and 24. Hon. A. H. McKnight of Dallas, president of the Texas Bar, recently announced that the following additional speakers were scheduled for addresses on that occasion: Paul Jones of Texarkana, Harry P. Dailey of Fort Smith, Ark., E. H. Randolph of Shreveport, La., William H. Burgess of El Paso, former U. S. Attorney General T. W. Gregory of Houston, Chief Justice E. A. McCulloch of the Arkansas Supreme Court and Henry P. Dart of New Orleans.

President McKnight has asked for a suspension of business in District and Appellate Courts of Texas during this important meeting. He stated that the meeting would attract some of the most famous men in the country and afford exceptional educational opportunities for all those who attend. He further pointed out that the convention begins before San Jacinto Day and closes on Saturday, making it possible for Texans to attend without losing more than three business days.

The Dallas, Texas, Bar Association held a "speechless banquet" on February 19. Arrangements were made for an attendance of 600, including members of the local and state bars and their ladies, and about thirty honor guests. In explaining the reason for this departure, President M. M. Chrestman of the Bar Association said: "What the bar needs today is more of the spirit of friendliness among its members and it is our intention to make this a banquet of conversation, music and re-

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freshment. There will be no addresses, no presiding officer, no set program. Speeches, especially after-dinner speeches, are very tiresome and boresome and offer no medium for getting acquainted. It will be difficult for a person to conceive of 600 lawyers and ladies getting together without some one making a speech, but lawyers are paid to talk and, as they are not getting any pay for this, there will be no difficulty in keeping them quiet."

The San Antonio, Texas, Bar Association at a recent meeting elected Judge Perry S. Robertson president and J. Creswell Hall, secretary.

Washington

Asks Help for Judicial Council

Chief Justice Warren W. Tolman and Associate Justices John F. Main and O. R. Holcomb, of the Washington State Supreme Court, were recently the guests of honor at a banquet of the Walla Walla County Bar Association. The Supreme Court judges were at this meeting in the course of a tour of the state, similar to that undertaken last year. Chief Justice Tolman made a special appeal to the lawyers to aid in making the recently created "Judicial Council" a success. He stated that the new acts creating the Judicial Council and vesting the full rule-making power for procedure and practice in the courts would be in effect in a month, and it was up to the lawyers to begin discussion and to make suggestions so that the Council will have something to act upon. "If this is taken hold of in the right spirit," he added, "the Judicial Council will continue as a permanent institution, otherwise, the legislature at the next session is apt to repeal the act. The remedy is now offered to the bar and I hope they will avail themselves of it." J. A. Coleman, of Everett, President of the State Bar Association, who was present on this occasion, also urged attorneys to do their part. He did not feel that there was any demand for revolutionizing practice, but said that the practice act should be "tuned up" from time to time.

President Coleman of the Washington State Bar Association recently announced that arrangements had virtually been completed to hold the next state meeting toward the end of July at Big Four, a summer outing place in Snowhomish County.

Miscellaneous

From Various Fields

The Otero County, Colorado, Bar Association at its annual meeting in January elected A. B. Wallis president and Joel W. Todd secretary.

The Lafayette, Louisiana, Bar Association at a meeting early in March re-elected Dan Debaillon president and Edward Meaux secretary. Judge William Campbell was elected vice-president and Dan Debaillon, Edward Meaux and F. Xavier Mouton were re-elected members of the executive committee.

The committee appointed in 1924 by the Colorado Supreme Court at the request of the Colorado Bar Association to revise the code of legal procedure in the state held a meeting in Denver the latter part of February to consider proposed changes and will hold another meeting about May 15. The members of the committee are: George B. Steele, of Denver, chairman; Merle Vincent, of Grand Junction, Ralph Carr of Montrose; Judge C. C. Butler, of Denver; Frank C. Mirick, of Pueblo; H. E. Munson, of Sterling, and Fred A. Sabin, of La Junta.

Cowley County, Kansas, lawyers formed a permanent bar association at a recent meeting at Winfield, with the following officers: Albert Faulkoner, Arkansas City, president; S. C. Bloss, Winfield, vice-president; Stewart Bloss, secretary.

The Tazewell County, Illinois, Bar Association elected the following officers at its recent annual meeting: Ben L. Smith, president; J. M. Powers, first vice-president, and H. Paul Jones and Wayne Townley, second and third vice-presidents, respectively; R. L. Russel, secretary; Harold Rust, treasurer, and J. O. Jones, trustee for three years.

Secretaries of State and Local Bar Associations will confer a favor by sending the Journal news of the interesting and important activities of their organizations for publication in this Department.

Address all communications to American Bar Association Journal, Room 1612 First National Bank Building, 38 South Dearborn St., Chicago, Ill.

The Utah County, Utah, Bar Association elected the following officers at its annual meeting in February: Jacob Coleman, president; George Watkins, vice-president; R. W. McMullin, secretary-treasurer.

The Okmulgee, Oklahoma, County Bar Association on March 8 elected T. J. Farrar, Okmulgee, president; G. L. Bynum, Henrietta, vice-president; John Alsop, secretary; Q. D. Gibbs, treasurer.

The Jackson, Tennessee, Bar Association recently appointed a committee of three, consisting of Judge S. J. Everett, W. G. Timberlake and Herron Pearson, to draft resolutions expressing the attitude of the bar towards an alleged local attack upon lawyers for the acceptance of cases for the defense of persons charged with heinous crimes.

The Ardmore County, Oklahoma, Bar Association at its annual meeting in January elected the following officers: W. B. Johnson, president; E. D. Slough, vice-president; William Potter, Jr., secretary.

The Multnomah, Oregon, County Bar Association elected the following officers at its annual meeting in February: Judge John A. Stevenson, president; Wilbur Henderson, J. P. Stapleton and Tom McDevitt, vice-presidents; John A. Beckwith, treasurer; John Guy Wilson, secretary.

The Pima County, Arizona, Bar Association elected U. S. Commissioner Edwin F. Jones president by unanimous vote at its annual meeting in February. Other officers elected were: James D. Barry, vice-president; Lynn D. Smith, secretary-treasurer; Dean Samuel M. Fegtly of the University of Arizona Law School, Elwood B. Frawley and George R. Darnell, members of the executive committee.

The Fayette County, Kentucky, Bar Association adopted a resolution early in February expressing appreciation to Governor W. J. Fields and the military officials for "the prompt and efficient action taken at the request of officials of Fayette County to prevent any disturbance of peace or any interference with the orderly processes of the law during the trial of Ed Harris, negro," charged with a particularly serious offense. The resolution stated that it ought to be a source of pride to the community that the court was allowed to proceed in an orderly manner with the enforcement of the law.

Mr. M. N. Chrestman was elected president of the Dallas, Texas, Bar Association at a recent meeting, succeeding Mr. Charles D. Turner. Other officers elected were Jack Thornton, First Vice-President; D. A. Frank, Second Vice-President; J. L. Lipscomb, Third Vice-President, and Pat O'Keefe, Sergeant-at-Arms. The retiring president suggested plans for free legal aid to be provided by the city, and also favored recommendation by the Association of candidates for each judgeship at the coming election. The Association has 428 members, according to the report of Herbert Whisenant, Secretary.

Hon. Frank Harris was elected president of the Boone County (Missouri) Bar Association recently. The other officers elected are: Vice-President, Col. Arthur Bruton, Centralia; Secretary, A. R. Troxell; Treasurer, Paul M. Peterson.

The Southwest Kansas Bar Association held a meeting on January 9 at Dodge City, Kansas. Justice Henry F. Mason of the State Supreme Court delivered an address in which he told the members about the English judicial system as observed by him on his visit in 1924.